

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
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14-CR-399 (ENV)

3 UNITED STATES OF AMERICA,

4 Plaintiff,

United States Courthouse
Brooklyn, New York

5 -against-

May 2, 2018
9:45 a.m.

6 ABRAXAS J. DISCALA, ALSO
KNOWS AS AJ DISCALA, AND
7 KYLEEN CANE,

8 Defendants.

9
10 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE ERIC N. VITALIANO
UNITED STATES DISTRICT JUDGE
11 BEFORE A JURY

12 APPEARANCES

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3469

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13 Proceedings recorded by mechanical stenography. Transcript
14 produced by computer-aided transcription.

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PROCEEDINGS

3470

1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise. Court is now open.

3 The Honorable Eric Vitaliano presiding. The case on the
4 calendar is *U.S.A. versus Discala and Cane*, Case Number
5 14-CR-399 on for a jury trial.

6 Will the attorneys please note their appearance
7 beginning with government counsel.

8 MS. JONES: Shannon Jones, Mark Bini and Patrick
9 Hein for the United States, along with Henry Ishitani and FBI
10 Agent Special Elyse Morris.

11 THE COURT: Good morning.

12 MS. JONES: Good morning, Judge. Charles Ross,
13 Matthew Shroyer and Scott Schwartz for Mr. Discala.

14 MR. BOWMAN: Good morning, Your Honor. Anthony
15 Bowman for Mr. Discala.

16 MR. CHENG: Good morning, Your Honor. Hanwei Cheng
17 for Mr. Discala.

18 MR. RIOPELLE: Good morning, Your Honor. Roland
19 Riopelle and Robert Caliendo for the defendant Kyleen Cane
20 this morning.

21 THE COURT: Good morning.

22 THE COURTROOM DEPUTY: Counsel for both sides
23 present, including the defendants.

24 MR. ROSS: Judge, may we have just a moment.

25 THE COURT: Sure. Do you have any housekeeping?

PROCEEDINGS

3471

1 MR. HEIN: Your Honor, we wanted to raise just one
2 housekeeping matter.

3 After the redirect and recross of the witness, we
4 think it would make sense, and obviously it depends how long
5 that is, but regardless, to have a sidebar and see about the
6 giving the jury a break to get some food.

7 What we would prefer not to have happen is that we
8 break the closing for a longer lunch, but instead do the
9 entire closing after they've eaten. So whether that would
10 mean breaking for an early lunch, or at least giving them a
11 chance to get something to eat so that we can complete the
12 whole closing before they wait for a bigger lunch.

13 If that's amenable with Your Honor, I think that
14 would be preferable.

15 THE COURT: We'll see where we're at.

16 MR. HEIN: That sounds great. We just wanted to
17 raise it again.

18 THE COURT: Okay.

19 Are you following your gut, Mr. Riopelle, with
20 cross?

21 MR. RIOPELLE: No, we're not going to have any
22 questions, Judge.

23 (Pause.)

24 (Jury enters the courtroom.)

25 THE COURT: Be seated, please.

PROCEEDINGS

3472

1 Counsel will the stipulate that the jury is present
2 and properly seated.

3 MS. JONES: Yes, Your Honor.

4 MR. RIOPELLE: Agreed, Judge.

5 THE COURT: All agreed. Thank you, counsel.

6 Ladies and gentlemen, welcome back. We are ready to
7 proceed.

8 When we finished up yesterday, Mr. Bini was finished
9 his cross-examination of Mr. Discala. Mr. Discala has resumed
10 the stand.

11 I remind him that he remains under oath.

12 Mr. Riopelle, I ask whether or not Ms. Cane has any
13 cross.

14 MR. RIOPELLE: Pardon?

15 THE COURT: Does Ms. Cane have any cross?

16 MR. RIOPELLE: No. No, Your Honor, we have no
17 cross-examination for this witness.

18 THE COURT: Mr. Bowman then on redirect.

19 MR. BOWMAN: Thank you, Your Honor.

20 May I proceed?

21 THE COURT: You may.

22

23

24

25

DISCALA - REDIRECT - BOWMAN

3473

1 (Witness takes the witness stand.)

2 **ABRAXAS DISCALA**, called as a witness, having been previously
3 first duly sworn/affirmed, was examined and testified first
4 duly sworn/affirmed:

5 REDIRECT EXAMINATION

6 BY MR. BOWMAN:

7 Q Mr. Discala, yesterday Mr. Bini played a tape recording
8 of a conversation on May 6th, 2014. And as part of that
9 conversation, you said, "And I got to do all the work, okay.
10 And this is a perfect play for me because as soon as I get the
11 fundamentals, this thing will go."

12 What are the "fundamentals"?

13 A Fundamentals are productive cash flow, cash flow
14 positive, joint ventures, the deal that we were doing with
15 Scanbuy. The deal we were do with Ping Mobile. The deal we
16 were doing with Wikipay. The contracts from Yellow Pages,
17 British Telecom.

18 Once the word got out that this company was
19 executing on its business plan, that I believed that the stock
20 would really go.

21 Q And that is it you called the fundamentals?

22 A That's what fundamentals are.

23 MR. BOWMAN: May I have Exhibit 177-22.

24 (Exhibit published.)

25 Q Mr. Discala, do you recall that Mr. Bini had asked you

DISCALA - REDIRECT - BOWMAN

3474

1 some questions about this exhibit yesterday?

2 A I do.

3 Q Now when did CodeSmart go public?

4 A May 13th.

5 Q And do you recall when you first started trading?

6 A The first trade was May 22nd.

7 Q Now, with respect to the Exhibit 177-22, I'm going to ask
8 you to look to the lower left and ask you: How many
9 free-trading shares were available to you, OmniView and
10 Fidelis as of May 21, 2013?

11 A As per this document?

12 Q Yes.

13 A 910,208 of that 29,000 were restricted.

14 Q And yesterday Mr. Bini asked you about a peak price of
15 CodeSmart trading.

16 Do you recall what that was?

17 A \$13.88.

18 Q Now, has there been agreement between the defense and the
19 government that you had approximately \$1.86 million in profit
20 from trading CodeSmart?

21 A Yes, a 4,000-dollar discrepancy.

22 Q And based on questioning yesterday on cross-examination,
23 what was your average sale price per share of CodeSmart?

24 A 900,000 shares at 1.8 million, would be about \$2. Maybe
25 just over \$2, \$2 and a couple pennies.

DISCALA - RECROSS - BINI

3475

1 Q And is that at or near the peak of \$13.88?

2 A \$13.88, no.

3 Q How far is it from the peak?

4 A 86 percent away.

5 Q After selling your shares in CodeSmart, why didn't you
6 start buying?

7 A Because there was \$1.93 million of dumping going on from
8 Mr. Salvani and Mr. Walsh.

9 Q With respect to CodeSmart, did you beneficially own more
10 than 5 percent of the company's common stock at a time when
11 you were required to file a Schedule 13D as a result of that
12 company being a Section 12 reporting company?

13 A No.

14 MR. BOWMAN: I have no further questions, Your
15 Honor.

16 THE COURT: Thank you.

17 Any redirect by you Mr. Bini?

18 MR. BINI: Just very briefly, Your Honor.

19 THE COURT: With those few questions, there has to
20 be not many.

21 RECROSS-EXAMINATION

22 BY MR. BINI:

23 Q I just wanted to ask you about the May 6th, 2014 call.

24 Could you just show up the transcript. I don't want
25 to play any call, I just want to show the transcript.

DISCALA - RECROSS - BINI

3476

1 Mr. Bowman asked you about this response where you
2 talked about the fundamentals to Mr. Turino. Is that right,
3 sir?

4 A Yes.

5 Q What did you say before you spoke about the fundamentals?
6 What did you say about whether or not anyone would see if the
7 Cubed works? What were your words, sir?

8 A This was May 6th prior to the launch on android and IOS.

9 Q I would just ask you to tell me what your words were
10 about if you would be out before the Cubed works.

11 A I facetiously said, "Because we didn't control any of the
12 stock, once the demand came in and the escrow sold the stock,
13 we have no control. So we would be out, as we were talking
14 about the Scanbuy joint venture, which would have given it
15 11-and-a-half-million users SkyTel in the Yellow Pages."

16 So once those announcements got out --

17 MR. BINI: I would ask to strike the answer, Your
18 Honor.

19 MR. ROSS: Objection.

20 MR. BOWMAN: Objection.

21 THE COURT: I'm going to let it stand because it's
22 over.

23 You can answer the question.

24 Q In fact, sir, didn't you say to Mr. Turino:

25 "By the way, this is what I also told them. While

PROCEEDINGS

3477

1 the company succeeds, you know, what I told them, JT would be
2 proud because you're not betting on the company, boys, you're
3 betting on me, because we'll be out before the F'ing company
4 will even see if the Cubed works," okay.

5 A They were betting on me to put in the management, to put
6 in the board, have Mike Wehrs, Eric Engstrom join the board.

7 THE COURT: The question is: Did you say that?

8 THE WITNESS: Yes, I said that.

9 MR. BINI: No further questions, Your Honor.

10 THE COURT: Okay.

11 Anything further?

12 MR. BOWMAN: Nothing further.

13 THE COURT: Then you're excused, Mr. Discala.

14 (Whereupon, the witness was excused.)

15 MR. ROSS: Judge, the defense rests.

16 THE COURT: All right.

17 Ladies and gentlemen, we now have both defendants
18 have rested, and I assume there is no rebuttal case.

19 MS. JONES: No, Your Honor, there is not.

20 THE COURT: Okay. So we've come to a building block
21 being completed again, which is a way of saying there are more
22 building blocks to come, so the case isn't over by any stretch
23 of the imagination. The evidence producing part of the case
24 is over.

25 Continue to keep an open mind. You may get a chance

PROCEEDINGS

3478

1 to do a little exercise today, because any time we reach the
2 end of a building block, it's time for the court to huddle
3 with the lawyers, and when it's a building block kind of end,
4 it's easier for all of us to do in a more open setting. So
5 rather than going to sidebar, we are going let you take a few
6 minutes rest in the jury room.

7 Don't discuss the case among yourself, or with
8 anyone that you should run into back there. Continue to keep
9 an open mind.

10 (Jury exits the courtroom.)

11 THE COURT: Before we move forward with the case,
12 we'll talk about the scheduling along the lines with Mr. Hein
13 to put us in the scheduling mindset.

14 MR. ROSS: Judge, Mr. Discala moves for a dismissal
15 of the charges for a failure under Rule 29 of the government
16 to prove a *prima facie* case sufficient to go to the jurors.

17 THE COURT: Mr. Riopelle.

18 MR. RIOPELLE: Yes, Your Honor. Defendant Cane also
19 moves pursuant to Rule 29 of the Federal Rules of Criminal
20 Procedure for a dismissal of the government's case at this
21 time.

22 THE COURT: On behalf of the United States.

23 MS. JONES: Your Honor, the government believes that
24 we proved to provide more than sufficient evidence for a jury
25 to find that both the defendants are guilty beyond a

PROCEEDINGS

3479

1 reasonable doubt.

2 THE COURT: The motions are made, the Court
3 continues to reserve decision.

4 Let's talk about scheduling.

5 Mr. Hein, I think -- I know when we first talked
6 about it, you wanted to have a mini break somewhere in the
7 middle. I think where we are is to get you all in before
8 lunch, but I'm perfectly prepared to take a little break in
9 the middle to give everybody a chance to catch up.

10 MR. HEIN: Your Honor, I think that will work well.

11 THE COURT: Okay. So are you ready to go now?

12 MR. BINI: Yes, Your Honor. Five minutes, if that's
13 all right.

14 THE COURT: We'll stand at ease for five minutes and
15 we can reconfigure the courtroom.

16 I know everybody's going to have to move, the
17 reporter, and you. And also get yourself ready and we'll come
18 back in about five minutes.

19 MR. HEIN: Thank you, Your Honor.

20 (Whereupon, a recess was taken at 10:38 a.m.)

21 THE COURTROOM DEPUTY: All rise. Court is back in
22 session.

23 Counsel for both sides present, including the
24 defendants.

25 THE COURT: Okay, we're ready to go. William will

PROCEEDINGS

3480

1 bring in the jury.

2 (Jury enters the courtroom.)

3 THE COURT: Be seated, please.

4 Counsel will stipulate that the jury is present and
5 properly seated.

6 MS. JONES: Yes, Your Honor.

7 MR. ROSS: Agreed, Judge.

8 MR. RIOPELLE: So stipulated.

9 THE COURT: Counsel, thank you very much.

10 Ladies and gentlemen, we're ready to begin that next
11 building block. And if you recall from the instructions that
12 you received at the very beginning of the trial, the next
13 building block is summations or closing arguments by counsel.

14 From this point forward, you will be hearing no
15 evidence. All of the evidence is already in. What you're
16 going to hear from counsel are their arguments to you about
17 what the evidence has proved or what it has not been proved.

18 You will also recall that the government has the
19 right to open and close the debate. So you will hear an
20 opening argument on behalf of the government, then each
21 defendant will have an opportunity to make their argument.

22 You will recall, the government has the right to
23 close the debate, which means that when a lawyer for the
24 defendant sits down, that lawyer can't get up again. That
25 lawyer will be complete. So pay careful attention to each of

SUMMATION - MR. HEIN

3481

1 the closing arguments that are made by counsel, and, of
2 course, separately consider the evidence with respect to each
3 defendant.

4 So to begin the closing arguments, I will call on
5 Assistant United States Attorney, Patrick Hein. Mr. Hein will
6 give me a signal somewhere in the middle of his summation to
7 signal a time to take a break, and which we will do so.

8 Mr. Hein.

9 MR. HEIN: Thank you, Your Honor.

10 MR. HEIN: Over the past month, you have seen and
11 heard overwhelming evidence proving that the defendants,
12 Abraxas Discala and Kyleen Cane, led a criminal conspiracy to
13 steal money from investors.

14 They did this by obtaining control of the shares of
15 certain companies. Artificially inflating the price of those
16 shares, and profiting at their investors expense.

17 Discala and his co-conspirators began their scheme
18 with CodeSmart. They purchased all of the free-trading
19 shares, meaning the shares that were tradeable on the market,
20 for pennies. And then they began matching their trades to
21 walk the price of the stock up.

22 Discala instructed corrupt brokers to buy CodeSmart
23 shares at increasing prices in their customer's accounts, as
24 Discala and his co-conspirators sold their shares for huge
25 profits.

SUMMATION - MR. HEIN

3482

1 Discala directed the same manipulation scheme of two
2 other companies, StarStream and the staffing Group.

3 After Discala drove CodeSmart stock price into the
4 ground, he started manipulating another company, Cubed. He
5 recruited Kyleen Cane, who brought something special to this
6 scheme, the escrow account.

7 Cane's escrow is special because in it she, and she
8 alone, controlled all of Cubed's free-trading shares. She
9 then sold those shares to Discala and other co-conspirators in
10 rigged trades to walk the price of Cubed up.

11 She made over a half a million dollars in profits
12 and was prepared to make much more when she and Discala were
13 arrested by the FBI.

14 Because of Discala's and Cane's fraud, investors
15 lost millions. You heard from several of these victims. They
16 invested in CodeSmart and Cubed because the defendants and
17 their co-conspirators misled them into believing that these
18 companies had promising products and strong growth potential.
19 But the defendants and their co-conspirators didn't tell these
20 victims that they were manipulating these stocks.

21 And you heard what happened to these victims when
22 CodeSmart's and Cubed's stock price collapsed. They no longer
23 had money to use for their children's college education. They
24 no longer had money to send their children to daycare.

25 Ladies and gentlemen, when my colleague, Mr. Bini,

SUMMATION - MR. HEIN

3483

1 stood before you a month ago, he told you that Discala and
2 Cane artificially rigged the prices of stocks to steal money
3 from investors. And that is precisely what the evidence has
4 shown.

5 Now this has been a long trial and we thank you for
6 your patience. Now is our opportunity to walk through the
7 witness testimony and the exhibits that have come into
8 evidence. I'm not going to address every witness or every
9 document, but I'm going to highlight for you the key evidence
10 and show how it proves beyond a reasonable doubt that the
11 defendants are guilty of each crime of which they've been
12 charged.

13 Now, one note before I turn to those charges. You
14 won't be able to take the PowerPoint slides that I'm going to
15 go through here this morning with you back into the jury room,
16 because they are just summaries of the evidence. But I tried
17 to note the exhibit number and the transcript page that I'm
18 referencing as we go through the slides. So you can review
19 those documents during your deliberations, if you so wish.

20 Let's look at the defendants' fraudulent scheme.

21 Defendants, Discala and Cane, defrauded investors in
22 CodeSmart, StarStream, Staffing Group and Cubed by
23 artificially controlling the price and trading volume of
24 shares in these companies. And they did this through the
25 fraudulent concealment of their and their co-conspirators's

SUMMATION - MR. HEIN

3484

1 ownership of these shares by engineering price movements and
2 trading volume in the stock; by purchases of stock for
3 unwitting investors, and through misleading press releases and
4 SEC filings.

5 Now, as you know, Discala participated in this
6 scheme with respect to CodeSmart, StarStream, Staffing Group
7 and Cubed. Ms. Cane participated in the scheme with respect
8 to Cubed.

9 And I'm going to go through these different steps
10 they took to carry out the scheme as we go through the
11 evidence today.

12 Let's take a look at the charges. Here are the
13 counts with which the defendants have been charged. And I
14 want to go through this briefly before we get into the
15 evidence.

16 There are ten counts. Discala's been charged with
17 all ten. Cane charged with three of those ten.

18 As you look at the left column, you will see the
19 count number, One through Ten. The second column you will see
20 the charge. The third, the companies that pertain to that
21 charge. And in the fourth column, which defendant has been
22 charged with which count.

23 Now, the first count, Count One, securities fraud
24 conspiracy.

25 Discala's been charged with that count with respect

SUMMATION - MR. HEIN

3485

1 to all those four of those companies that are listed:
2 CodeSmart, StarStream, Staffing Group, and Cubed. Cane with
3 respect to Cubed.

4 And if you look at Counts Three and Four, you will
5 see those are also securities fraud counts; three with respect
6 to Cane, four with respect to Cubed.

7 Now, Judge Vitaliano will walk through the law with
8 you after summations, and what he says controls. But I want
9 to give you a brief preview of the law.

10 So first on the securities fraud counts, Count
11 One -- excuse me Count One, Three and Four.

12 To prove securities fraud, we need to prove that in
13 connection with the purchase or sale of the security, the
14 defendants knowingly participated in what's called a "scheme"
15 or "artifice to defraud". And that they used interstate
16 communications to further that scheme.

17 And you will hear that a scheme or artifice to
18 defraud just means a fraudulent scheme. And that really just
19 means to deceive or gain an advantage over another person by
20 lies or false representations.

21 And interstate communications can be telephone
22 calls, emails, texts.

23 Now, looking at Count Two, wire fraud and mail fraud
24 conspiracy. Again, Discala charged with respect to all four
25 companies, Cane as to Cubed.

SUMMATION - MR. HEIN

3486

1 And if you look at Count Five through Ten, which are
2 charges of wire fraud counts, and only Discala's charged with
3 those.

4 Now, wire fraud provides -- excuse me, is a crime if
5 the defendants knowingly participated in a fraudulent scheme
6 and used interstate wires to further that scheme.

7 Again, wire is a telephone, an email or a text. But
8 very similar to the securities fraud charge, except it doesn't
9 have to be in connection with the purchase or sale of the
10 security.

11 And as to Counts Five through Ten, you will see each
12 of those are telephone calls that Discala made. And you'll
13 hear from the judge that a wire fraud, each call is itself a
14 crime, if each individual wire or call is made in furtherance
15 of the fraudulent scheme. And I'll walk through that later.

16 Now, the final thing I want to point out is that the
17 first two counts are conspiracy counts. And conspiracy simply
18 means the defendant knowingly joined an unlawful agreement to
19 commit the first count, securities fraud, and the second
20 count, wire fraud and mail fraud.

21 The final thing I want to point out is that for
22 securities fraud conspiracy, it requires an overt act. And an
23 "overt act" is simply an act taken to further an objective of
24 the conspiracy.

25 And there are 13 overt acts that are charged and

SUMMATION - MR. HEIN

3487

1 I'll walk through them with you today: They are emails,
2 calls, and prove those to you as well.

3 At the end of this presentation, after I've walked
4 through all the evidence, I'll come back to these charges and
5 show you how the evidence proves beyond a reasonable doubt
6 that these defendants are guilty of the crimes charged.

7 So let's turn to the first scheme, the CodeSmart
8 scheme.

9 Discala and his co-conspirators obtained and
10 concealed their control of their CodeSmart free-trading
11 shares. They then artificially inflated the price of those
12 shares, and victims lost money.

13 We're going to look at each one of those. First
14 now, Discala's control over CodeSmart's free-trading shares.

15 Now as you learned from various witnesses, Discala
16 obtained control of these shares through a reverse merger of
17 CodeSmart in a company called First Independence, which was a
18 shell company that worked on portable foods, which was merged
19 into CodeSmart.

20 And you heard from Deb Oremland, the expert from
21 FINRA, who defines some of these terms for you.

22 A "shell company" is a public company that has no
23 operations, really no business, and limited assets.

24 And a "reverse merger" is when a private company,
25 such as CodeSmart, merges into that shell company, and then

SUMMATION - MR. HEIN

3488

1 CodeSmart comes out being the public company.

2 And I'm going to go through how Discala obtained
3 control of the CodeSmart shares through that reverse merger.

4 We went through this exhibit with Marleen Goepel.

5 And you remember Marleen Goepel. Marleen Goepel was Discala's
6 secretary. She pled guilty to securities fraud, because she
7 permitted Discala to hold the shares under her name and trade
8 in her account. And you recall her telling you that he said
9 he needed to do this because he couldn't own more than
10 5 percent of the company.

11 And she went through this exhibit with us. This is
12 the purchasing of the shares from First Independence for
13 CodeSmart. And why is it important? It's important because
14 Discala recruited co-conspirators and people close to him to
15 be the people who were going to buy and control all of these
16 shares.

17 In the left column, are the First Independence
18 shareholders. And the other columns are the individuals and
19 companies who bought these shares.

20 They bought these shares for 2.3 cents a share. Why
21 is that important? That's important because, almost
22 regardless of what price they then subsequently sell it for,
23 they're make a profit.

24 So if you buy a thousand, or 10,000, or even
25 hundreds of thousands of shares at 2.3 cents a share, and the

SUMMATION - MR. HEIN

3489

1 stock starts trading above \$3, as CodeSmart did, you're making
2 a lot of money when you're selling those shares as Discala and
3 this co-conspirators did.

4 This chart is also important because this is the way
5 to control that. For CodeSmart, Discala let his
6 co-conspirators in so that he knew who held the shares,
7 because he can control those people. He can work with those
8 people. And that's what he did here.

9 And here, these are the 156,250 shares that Marleen
10 Goepel let Discala purchase in her account and trade and
11 concealed his identity in the doing so. He gave her the money
12 for it. She bought them. And he traded in her account.

13 Now, when Discala testified yesterday, he said, no,
14 those weren't my shares. He said, it didn't happen that he
15 had told Marleen Goepel to trade, but the evidence you see and
16 you'll see here undercuts that claim.

17 This document, Marleen Goepel went through as well.
18 On the left are the checks that you just saw in the previous
19 exhibit that she paid, the 3600 that she paid for the shares.
20 And on the right are the notes she took at the time saying
21 these are AJ's shares. AJ's states above in handwriting. And
22 there you see the 156,250 shares. And that's what she pled
23 guilty to, to allowing him to do that and committing
24 securities fraud.

25 Now this other chart. This chart lists the owners

SUMMATION - MR. HEIN

3490

1 of CodeSmart shares. And this chart is important because she
2 explained to you that each one of the individuals and entities
3 listed here were close to Discala. They were co-conspirators.
4 They were partners. Some folks he knew. And as he conceded
5 yesterday, many of them, if not all, signed lock-up/leak-out
6 agreements.

7 And what was the purpose of that? The purpose of
8 that is to ensure that these co-conspirators and other
9 individuals who buy the bulk shares don't dump their stock.
10 So he controlled them, making sure that they walked the price
11 up without somebody coming in.

12 Now, I won't go through each name on this list, but
13 as you see from the top, Ira Shapiro, the CEO of CodeSmart, a
14 co-conspirator; Marc Wexler, who testified here, was a partner
15 of AJ's. He also pled guilty to securities fraud and
16 conspiracy and other crimes. He sold shares in CodeSmart.

17 Joseph Discala, AJ's Discala father. Fidelis
18 Holdings and OmniView Capital. What are those? Those are
19 companies that AJ Discala ran. They hold a lot of the shares
20 here. And the list goes on. From Hillary Auerbach, the wife
21 of Jeff Auerbach, an associate of AJ Discala. Lucy Ostrovsky.
22 Marleen Goepel, the secretary.

23 There's three companies below there, JFS Investment,
24 Draper, Hudson Park Capital, Joe Salvani's companies. Chris
25 Herghelegui.

SUMMATION - MR. HEIN

3491

1 On the right side: Garper. That's the company that
2 Craig Josephberg, the corrupt broker with whom he worked. His
3 wife owned that company.

4 Matthew Bell. You heard from Matthew Bell. He was
5 also an accomplice here, a corrupt broker in Texas.

6 There's AJ Discala. Michael Morris ran Halcyon, the
7 corrupt brokerage firm which Josephberg and Sloan, who you
8 heard from was an accomplice, worked.

9 Let's goes on. These are all individuals who AJ
10 Discala conspired with or was very close with and could
11 control to ensure that they don't sell.

12 And this here, just to note, is Government
13 Exhibit 177-22.

14 Now what else is important about this chart. I
15 highlighted here certain rows in green in this exhibit. These
16 are AJ Discala's shares. You see the number of shares in his
17 name on the far right here, 68,750. That's all the shares in
18 his name that were free-trading shares.

19 If you look at the left column, look at the line in
20 the middle starting with Fidelis Holdings, and you work your
21 way down. Those are the free-trading shares. The shares
22 above that, as it states, are either bridge shares or PIPE
23 shares that are restricted.

24 Look at the holdings. Fidelis Holdings, 238,000.
25 OmniView, 362,000 shares. And then there's the Marleen Goepel

SUMMATION - MR. HEIN

3492

1 pool shares. Those are the shares that AJ Discala bought in
2 her name and traded in her account.

3 And the final important point from this exhibit,
4 what you saw on the bottom right. The calculation of the
5 shares that AJ Discala had and could trade. OmniView and
6 Fidelis. His companies. He testified yesterday OmniView was
7 his and his alone. And AJ Discala, 253,000.

8 So OmniView and Fidelis, that sums all the
9 restricted and free-trade shares we saw on that chart. And
10 under AJ, 253,000. That includes the 156,000 shares for
11 Goepel. That's why they are under his name. And that sums to
12 910,000.

13 And 910,000 is 12 percent of the total shares of
14 this company. Only 10 percent, himself alone. This isn't
15 even considering Marc Wexler, Matthew Bell, all of his
16 co-conspirators who he is working with. These are his shares
17 and he controls them.

18 The final point here, 547 is the stock price on
19 May 30th, 2013. When he had this calculated, that's what the
20 value came out to, almost \$5 million worth of shares.

21 Here's CodeSmart's 10-Q filing, Government
22 Exhibit 5.

23 Why is this important? This goes to the
24 concealment. This is why it's so crucial for the investors.

25 AJ Discala, and you will see the same form when we

SUMMATION - MR. HEIN

3493

1 get to Cubed and Kyleen Cane. They are carrying out a
2 manipulation scheme, and they don't want people to know. They
3 don't want the public, they don't want investors to know that
4 they control all of this. All of these shares in the company.

5 Why? Because if an investor knows that you are
6 controlling, you have power to control this stock, they might
7 hesitate to invest. Because they know what you can do to the
8 stock. You can manipulate it. You can do things outside of
9 the normal market conditions.

10 And what do you see on this list? You see Fidelis
11 Holdings and OmniView listed as more than 5 percent owners.
12 But you don't see AJ Discala. And you know that he himself
13 controlled 12 percent of the shares. But he's not listed on
14 there, because is concealing those companies.

15 What else do you know? You know that Fidelis and
16 OmniView, although it's very clear from every witness and
17 himself when he testified, were his companies. He ran them.
18 They weren't in his name. The signatories of those companies,
19 and you saw this through Marleen Goepel's testimony, were his
20 wife, Dounya Discala, and Lucy Ostrovsky, who worked for him.
21 He didn't even have his names on those companies.

22 And, again, he doesn't want to put out to investors
23 that he's running everything. Because he's carrying out a
24 manipulative scheme. And if they're going to put this out in
25 a filing, it needs to be right, and it's not right here. He

SUMMATION - MR. HEIN

3494

1 owns far more than 5 percent. And that's not disclosed.

2 Now Matthew Bell. He's a corrupt broker. He
3 testified here. He was the first one. You heard from him for
4 several days. A corrupt broker in Texas, who testified he
5 pled guilty to several crimes, securities fraud conspiracy and
6 he testified that he worked with AJ other co-conspirators for
7 months manipulating all four of the companies at issue. And
8 he explained that Discala would sell and he would tell Matt
9 Bell where to buy in his client's accounts, and Matt Bell
10 would do so, and they would walk that price up.

11 And he explained to you what the purpose of
12 controlling the free-trading shares is. He told you AJ would
13 know all the different people that owned all the shares. And
14 that's what you just saw on those exhibits we went through.
15 And he said so by having control of the shares, we would be
16 able to manipulate the stock much easier. That way you don't
17 have somebody that has some shares you don't know about out of
18 the blue come in and mess up whatever you're doing that day by
19 selling into your plan.

20 And that's at the heart of all these schemes;
21 CodeSmart and Cubed. And we'll get to Cubed later and explain
22 why they had even greater controlled there through Kyleen
23 Cane. But here in CodeSmart, AJ Discala accomplished that
24 control with his co-conspirators and other people.

25 Now, let's turn to the artificial inflation of

SUMMATION - MR. HEIN

3495

1 CodeSmart's stock.

2 You saw Bell mentioning manipulating the stock
3 price. What that means is to artificially control the stock
4 price.

5 You heard from Deb Oremland, the FINRA expert, and
6 she explained to you what a market looks like under normal
7 market conditions. And this is critical, and keep this in
8 mind, this goes to the heart of had whole case.

9 Under normal market conditions, people buy stock and
10 sell stock based on the merits of the company, on the prospect
11 of the company; whether they had good earnings or good deals.

12

13 (Continued on next page.)

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SUMMATION - MR. HEIN

3496

1 MR. HEIN: And when they buy or sell stock, they
2 don't know who's on the other end of that purchase or sale.
3 They are just buying or selling based on what they think what
4 the company has accomplished and what its prospects are. When
5 you have an artificial control and inflation of the stock
6 price as you do here, that's not what's happening. As you
7 see, people do know who are on each side of the bid. People
8 who were buying and selling knew who they were buying and
9 selling into and they knew why they were doing it, because
10 they were walking that price up to profit. They weren't doing
11 it based on the merits of the company, they were doing it as
12 part of a manipulation scheme.

13 Here's testimony from Matt Bell. He said he worked
14 with a group of people to manipulate four stocks in the stock
15 market for profit. CodeSmart, Staffing Group, StarStream and
16 Cubed. And when asked what the specifically did you do wrong,
17 he said I worked with a group of people to manipulate the
18 price of stock that I personally owned at a low price to move
19 the price of the stock upwards and sell my stock at a profit.

20 He was asked: Who you committed these crimes with,
21 he said the defendant AJ Discala, Darren Ofsink, Ira Shapiro,
22 Craig Josephberg, Marc Wexler and Kyleen Cane.

23 And you know who these people are he mentioned, AJ
24 Discala of course is the defendant Discala. Darren Ofsink 10
25 you heard about, he's the lawyer for CodeSmart. The lawyer

SUMMATION - MR. HEIN

3497

1 that the company and AJ used prior to Kyleen Cane coming in
2 for Cubed.

3 Ira Shapiro, CEO of CodeSmart who AJ worked with --
4 Discala worked with in this conspiracy to put out false press
5 releases, to take steps to artificially affect the price of
6 the stock. Craig Josephberg, the corrupt broker at Halcyon.
7 Marc Wexler, we discussed, the accomplice and, of course,
8 Kyleen Cane. We'll get to more of Ms. Cane later.

9 Here is a chart of the stock price and trading
10 volume, Government's Exhibit 196-3 of CodeSmart. What you'll
11 see here is that the defendants, AJ Discala and his
12 co-conspirators, conducted two pump and dump schemes. The
13 first began May 13th when the stock started trading, reached a
14 peak on July 12th, and then it fell dramatically on
15 August 21st. And at that point they conducted another pump
16 and dump. From August 21st to August 30 the peak there 460
17 and then it dropped after August 30th and essentially fell for
18 good.

19 We're going to walk through these two pump and
20 dumps. Here's the first pump and dump. As I said, May 13th
21 to August 21st. It is the same chart. This is the first pump
22 and dump made bigger for you.

23 Now, as you see, and as Matt Bell explained to you
24 in his testimony, the stock price started on May 13th at a
25 little over \$3. On June 14th there was a stock split.

SUMMATION - MR. HEIN

3498

1 Meaning that the stock price was cut in half and the shares
2 doubled. And Matt Bell told you why they did a stock split.
3 They did it, number one, to stay under the radar from
4 regulators that this price shouldn't go up too high too fast.
5 If you do a stock split, it will halve that price and then you
6 can start over again. And, number two, it enables you to pump
7 the stock even further because you're not getting into the
8 double digits. And that's what they did.

9 So on June 14 that stock dropped in half and picked
10 up again around \$4 until it made its way to \$6.94. That's
11 important too, because if you look at this chart, if they
12 hadn't done a stock split and they had gotten to 6.94 that
13 would have been almost \$14. So you'd see this line going from
14 a little over \$3 to \$14 to its peak. From May 13th to
15 July 12th they pumped the stock to about four times -- more
16 than four times its previous level.

17 Then the stock fell on July 12th to August 21st.
18 And Matt Bell and Jamie Sloan, another accomplice who worked
19 with Craig Josephberg, she also pled guilty to securities
20 fraud conspiracy, she explained to you why it fell and so did
21 Matt Bell. Because at that point the two of them had been the
22 ones buying while AJ Discala and Marc Wexler, other
23 co-conspirators were selling into them. Bell was buying for
24 his clients' accounts, Jamie Sloan and Craig Josephberg were
25 stuffing their clients' accounts. And they both said that

SUMMATION - MR. HEIN

3499

1 after this price went up there and then the price started
2 falling, Matt Bell was receiving complaints from his
3 customers. Jamie Sloan said it wasn't as feasible to stuff
4 customers because they were complaining because it was become
5 obviously what was happening. And so because they couldn't
6 buy because of this match trade scheme, the price started
7 falling, and we'll get into that little more.

8 Now, Matt Bell explained to you what happened those
9 first two months of CodeSmart. AJ and I would text each other
10 on a daily basis. And you saw hundreds and hundreds of those
11 text messages, we went through them the first few days of his
12 testimony of this trial.

13 He told you, AJ Discala would tell me where to put
14 the bid, i.e. where he should bid to buy CodeSmart, while AJ
15 Discala was selling, and Bell told you AJ Discala was the
16 quarterback so he was coordinating with Craig, Craig
17 Josephberg, who worked with Jamie Sloan, and myself with a few
18 other traders that I found out about and then he would tell us
19 where to purchase the stock. Or I would tell him I have
20 30,000 of my customers' money to purchase, and Bell would ask
21 where do you want me to buy at, and Discala would say, buy it
22 at this price because Discala is selling his shares. And he
23 conceded on the stand yesterday that he sold over a million
24 dollars worth of profit in those first few months that was
25 part of the scheme.

SUMMATION - MR. HEIN

3500

1 And here, here are those match trades. This chart
2 shows who is buying and selling as part of this conspiracy in
3 CodeSmart. Take a look at the red. The red are the sales of
4 CodeSmart stock. And here are the people who were selling:
5 AJ Discala, Fidelis, AJ Discala's company. Omni View,
6 Discala's company. Marc Wexler, a co-conspirator. Garper,
7 that's Josephberg's company, a co-conspirator. Matt Bell, a
8 co-conspirator. Marleen Goepel, a secretary. Matthew Morris
9 and Michael Morris. Michael Morris being the boss of Craig
10 Josephberg. Chris Herghelegiu, another friend of AJ's.
11 Arline Josephberg, the mother of Craig Josephberg. Those are
12 the accounts. These are all the co-conspirators who are
13 selling and making profits. And who's buying? The customers
14 of Alamo, that's Matt Bell's advisory company, and the
15 customers of Halcyon, that's Craig Josephberg and Sloan's.
16 Those are the victims. Those are the victims who they are
17 either stuffing or telling them this is a great stock to buy
18 while they are perpetrating this pump and dump scheme.

19 Now, I expect the judge will tell you at the end of
20 this trial, when he tells you the law, that match trades are
21 intended to mislead investors by artificially affecting market
22 activity, and that they are prearranged purchases and sales of
23 securities at the same price and volume and time of execution.
24 And that's what these are, match trades. And you can tell
25 that because look how many are substantially similar. In the

SUMMATION - MR. HEIN

3501

1 red bar, the size of the bar reflects the volume, the number
2 of shares sold in volume. And the blue bars, look how many
3 instances on this chart they mirror one another, they are
4 about the same because they are matching those trades.

5 Another important point the judge will tell you is
6 that rigging prices that are intended to mislead investors by
7 artificially affecting market activity is illegal. So even if
8 these -- the volume on the sale, the buy side aren't precisely
9 the same, you know based on the witnesses' testimony and the
10 documents we've looked at and the trading data, that these are
11 rigged trades. And by rigged I mean where the buyers and the
12 sellers know who is buying and selling and they know what they
13 are intended to do, to work the price up. And that's what you
14 see here.

15 Jamie Sloan, again she worked with Craig Josephberg,
16 she testified as an accomplice. She pled guilty to securities
17 fraud conspiracy. And she stated: At Halcyon Cabot, their
18 brokerage firm, because we were selling stock in small
19 increments at ascending prices, to higher and higher prices,
20 and because AJ was such a large shareholder and we were
21 buying, it would ascend in the order that we entered those
22 sales orders, so the stock price would rise based on the way
23 we had entered the trades.

24 She was asked: Who was giving the instructions on
25 the way that you were entering those trades? AJ Discala.

SUMMATION - MR. HEIN

3502

1 And that's exactly what the pump is. Prearranged,
2 ascending prices, buying and selling, and you know you've
3 heard from Deb Oremland supply and demand, that's what works
4 the price up, and that's what happened here with CodeSmart.

5 And, you know, AJ Discala told you in his own words,
6 in those text messages with Matt Bell what he was trying to do
7 and what he did here. Let's take a look at a few of those:
8 Gonna be our first monster, that's what he wrote to Matt Bell
9 about CodeSmart when he first introduced him on May 10th,
10 three days before the stock trade. Our first monster.
11 Monster, as in we're going to make huge profits from the
12 scheme. That's Government's Exhibit 132-2-D.

13 What else. This is our first baby together, it's
14 gonna be a big winner. AJ Discala testified yesterday that he
15 cared about these companies. He didn't care about these
16 companies, he cared about his profits, what he was making out
17 of this. That's exactly what he said. This is our first baby
18 together. Me and Matt Bell. We're going to match trades and
19 make a lot of money out of this. It's gonna be a big winner
20 for us and our co-conspirators. This thing is going to fly,
21 talking about the stock price. The stock price is going to
22 fly. Government's Exhibit 132-2-H. Yes, sir, rocket man. To
23 rocket the stock. We're a good team. Gonna do well for each
24 other, that's a promise. That, ladies and gentlemen, is
25 evidence of the conspiracy. We're a good team. Gonna do well

SUMMATION - MR. HEIN

3503

1 for each other. Two people agreeing to carry out this
2 fraudulent scheme.

3 Then he said, gotta wait for split and then rocket.
4 This is a week before the stock split. This shows exactly
5 what Matt Bell was saying about what they were trying to do.
6 They were going to split that price in half, be right back to
7 \$4 and then rocket it back up.

8 Here's the stock price. Closed the first day 355,
9 on June 13th, the day before the split, it's at 780. The next
10 day it goes to 458, because again it split in half and then
11 they started pumping it again. And here at the height, 694 on
12 July 12th.

13 Now, an important point about the state of
14 CodeSmart's business on July 12th when the stock hit \$6.94.
15 \$6.94, based on the number of shares outstanding, so market
16 capitalization, take the stock price, and multiply it times
17 the shares. At this point, at that stock price, CodeSmart was
18 worth \$86 million as a company. That wasn't based on any
19 merit of that company. If you look at the 8-K listed right
20 around the same time, it had \$6,000 in assets; 7,000 in
21 revenue; and a net loss of \$103,000. Those are not the
22 financials of an \$86 million company because it's not based on
23 their financials, it's based on the manipulation.

24 Now here is just one day of texts, and you saw
25 hundreds of these texts for days from Matt Bell. But one day

SUMMATION - MR. HEIN

3504

1 to give you a sense of precisely how they were doing this. So
2 Discala starts with: You ready for a big week, bro. It's the
3 beginning of the week on Monday. Then he writes: Give him a
4 minute after open to get all the stock. I put in 10,000 at
5 503, then 2500 at 504, 506, 507, 508, 509. And Matt Bell
6 testified why you do that, you put those bids in you're
7 setting that floor. Even if they don't get hit, even if
8 someone doesn't sell into it, you're ensuring the price
9 doesn't fall below those. It's going up.

10 Bell writes back: Doing it. Discala says: Go.
11 Bell says: Up to 507. Discala says: 509 if you want. Just
12 sent 15,000 shares at 509. Nice. 511. Fill my 511. I got
13 6300 shares to fill. Full. Fill. I'll put out now. Gimme
14 three. It's done. Let's go next level. I still have shares
15 to buy. It's in. Go. Limit.

16 You saw hundreds and hundreds of text messages doing
17 that every day. Just working the price up. Filling each
18 other's sales that Discala was putting in and the buys Matt
19 Bell was doing with his clients.

20 If you look at this, we mentioned the price that
21 they're talking about 503, 504, 509 and going up to 509, 511.
22 Take a look at, the stock price closed the Friday before at
23 502. And it's exactly what you saw, they're working up 503,
24 508, 509. And where it does it end up that day at 526 with
25 157,000 shares of volume. You see there in one day what they

SUMMATION - MR. HEIN

3505

1 did on a daily basis, work the price up and you see where it
2 got them.

3 Now, we mentioned misleading press releases and SEC
4 filings. Discala and his co-conspirators -- and, again, we'll
5 discuss this when we get to Cubed as well of the importance of
6 news and press releases. But with respect to CodeSmart, he
7 and Ira Shapiro and others ensured that there were constant
8 press releases out. And Matt Bell told you why. Because you
9 put press releases out, put good SEC filings out -- and Matt
10 Bell didn't care whether they were accurate or not, he didn't
11 even know, but you put those out you can justify to your
12 investors why you're buying the stock. Why it's a good stock.
13 So that's why news was so important and they discussed often
14 in the text messages.

15 Here is a few examples. Right at the beginning on
16 May 10, before they even started, Discala wrote: Easy. Wait
17 'til you see news, every Tuesday, Wednesday. It's part of the
18 scheme. The news will come and allow you to justify why
19 you're buying. The same thing with Josephberg. If clients
20 called to complain that he's stuffing them, he says to them
21 Sloan discussed the news press release as well. He says, this
22 is why I'm buying. Good news out of here. Discala here on
23 May 23rd, more news. And then Discala writes: I just like
24 that news is constant. Because news is so important to drive
25 this.

SUMMATION - MR. HEIN

3506

1 And here's, Discala mentioning he was testifying
2 yesterday that he sold but he didn't tell Bell where to buy.
3 These text messages are full of Discala telling Bell when to
4 buy and where to buy and how much. And here's just an
5 example. He writes to Discala, Bell writes, 477 to 478.
6 Discala writes back 478. Then Discala writes: Nice, buy 500
7 at market. Want to go back to 81. He wants to get to 481.
8 Of course he was telling him when to buy as part of the
9 scheme.

10 Now, Bell told us -- we asked him, what was your
11 understanding for why Discala liked the news constant? Bell
12 told you because the more news that comes out, Yahoo News or
13 major newswires, the more legitimacy the stock has.

14 Why is that? Because we're buying a lot of stock
15 for a lot of different people and we can shore up the reason
16 that we're buying the stock with these news stories.

17 Let's look at some of these news stories. The
18 may 28th, 2013 press release from CodeSmart. Government's
19 Exhibit 172-41. You saw this about the Binghamton. It stated
20 that CodeSmart is a strategic partner and has an exclusive
21 strategic partnership with Binghamton. Then you heard from a
22 representative from Binghamton, Ryan Yarosh. What did he tell
23 you? He told you that this was false. This wasn't true.
24 They didn't have an exclusive relationship with Binghamton.
25 Well, why are they putting this out? They're putting this out

SUMMATION - MR. HEIN

3507

1 because it's good news for the public that they can use to
2 further their scheme.

3 Then here on June 4th. Discala -- news out now,
4 Bell writes. Discala says: I'm sure. And bell writes:
5 Ramapo news out. Discala testified yesterday he had nothing
6 to do with the news. He didn't know it was coming. Discala
7 new exactly what was happening in the news. He said in the
8 beginning it's coming every Tuesday, Wednesday. He knew it
9 was coming because he was working with Shapiro on this and he
10 had inside information about when it was coming. And he knew
11 about this Ramapo College news press release coming out. Here
12 it is on June 4th. This one also states, CodeSmart had an
13 exclusive strategic partnership with Ramapo College.
14 Government's Exhibit 172-49.

15 What did Rosa Mulryan tell you when she testified,
16 the representative from Ramapo? This was wrong. There was no
17 exclusive partnership on June 4th. Again, they were putting
18 this out because they wanted to push the price regardless of
19 whether it was true, and this wasn't true.

20 And here on June 4th, 2013, the same day, Ira
21 Shapiro writes an apology email to Rosa Mulryan from Ramapo.
22 Stating, my apologies on behalf of CodeSmart. Admitting that
23 that news release wasn't true.

24 I want to note for you, you see the top right it
25 says Overt Act A. I mentioned overt acts in the beginning.

SUMMATION - MR. HEIN

3508

1 This is Government's Exhibit 181-1. As I said, overt acts are
2 acts taken to further some objective of the conspiracy and
3 they are necessary for the securities fraud charge. Now I'll
4 go through them, we've charged 13 of them, you just need to
5 find that at least one of them furthered this conspiracy.

6 And here, Overt Act A, Ira Shapiro is writing this
7 email of apology, he doesn't want Ramapo College to suddenly
8 make a big deal out this, to bring this public, complain, do
9 whatever they might do to question CodeSmart's integrity as to
10 what they're putting out when they're putting out false press
11 releases. He's furthering their conspiracy.

12 Now I mentioned earlier the price started falling
13 after July 12th of CodeSmart. As I mentioned, you heard from
14 Bell and Sloan that it was falling because they weren't
15 filling that buy side anymore; they couldn't. Bell's clients
16 were complaining. You saw text messages about it, he
17 explained it, they were complaining the stock price is
18 falling. And Sloan said they couldn't stuff people to that
19 degree because the stock price was falling.

20 And so Bell's clients started to complain so much
21 and threatening action that Bell and Discala got together and
22 they said what are we going to do about this. What they did
23 was provide hundreds of thousands of CodeSmart shares at 14
24 cents a share -- or 10 cents a share to keep these clients of
25 his quiet so they don't go complaining, they don't go to

SUMMATION - MR. HEIN

3509

1 regulators, they don't raise a stink. It's essentially bribe
2 money saying, look, the price is still up in the two, 3-dollar
3 range, 14 cents will give you shares and that will make up for
4 it.

5 You see that here. Bell 272. He was asked: What
6 was the purpose of providing 750,000 shares to the customers
7 at 14 cents? He said, they were upset. It was like hush
8 money, but it was hush shares, you know. If I could sit down
9 with the customer and say, look, we'll get you 50,000 shares
10 at 14 cents, you'll be able to sell at some point. And that's
11 what they were doing in the August time frame when the stock
12 was coming down from its height of 6.94.

13 Here's Overt Act B from Exhibit 178-40. And this is
14 a stock purchase agreement. This is what the -- the steps
15 they took with the client. This was an individual named Jim
16 Reynolds. Discala signed it. This is a client of Bell's and
17 he is selling at 14 cents a share tens of thousands of shares
18 of CodeSmart as hush money. As I mentioned, with overt acts
19 this is another overt act, another step to further the
20 conspiracy and the step here is to hush these people up so
21 they can keep their scheme going.

22 Pump and dump two. As I mentioned, the stock went
23 up 694 on July 12th, it fell to 219 on August 21st. And at
24 that point Discala and his co-conspirators began to purchase
25 stock so that they could recover. Now why did they do this?

SUMMATION - MR. HEIN

3510

1 They did it so that Bell's clients and Josephberg and Sloan's
2 clients didn't run to the authorities, and they did it so they
3 could manipulate it further, make more money off it.

4 Here is that second pump. You see the bottom there,
5 219 August 21st, August 30th it more than doubled to \$4.60 and
6 then it cratered again in September. And here Government's
7 Exhibit 196-4, these are the stock prices I just described.
8 This is the puff portion from 219 to \$4.60.

9 Now how did they do this? Government's
10 Exhibit 196-7. This chart shows you the match trades on
11 August 21st. They worked the price back up. Discala is
12 selling through Marleen Goepel's account CodeSmart shares and
13 Marc Wexler is selling through his account CodeSmart shares.
14 Who is buying? Michael Morris, the head of Halcyon, as part
15 of this conspiracy. Ron Heinerman, he's the compliance to
16 Halcyon. Matthew Bell, who you heard from. Garper, that's
17 Craig Josephberg, and then Discala's accounts. This is match
18 trading. On that day, look how many shares trade hands
19 between people who know each other. You're selling in to the
20 other individuals who know they're buying your shares to try
21 to work this price up because it's supply and demand. You get
22 the bids higher and higher, you work it up, sell right into
23 it.

24 How else did they accomplish this, how did they get
25 the price to double from August 21st to August 30, again more

SUMMATION - MR. HEIN

3511

1 press releases, more filings. Bell asked Discala, letters?

2 Discala says -- this August 26, Government Exhibit 132-2-DD.

3 Discala says, from CEO, Ira Shapiro on CodeSmart. He knows

4 about this press release before it's even come out. He knows

5 about it because he's conspiring with Ira Shapiro to get it

6 out to push this price up. Discala says to Bell: Watch for

7 letter, a letter from Ira Shapiro, and then buy, buy. Letter

8 tomorrow, Discala says now buy. Any minute. Cool. It will

9 be very cool. Then Bell writes read now -- excuse me.

10 Discala writes: Read now. Please help me build some

11 momentum. Momentum in the stock. This has come out now, this

12 letter from Ira Shapiro saying how great the company's

13 prospects are notwithstanding the fact that the price has

14 just plummeted over the last month, and they want to buy on

15 this news.

16 Here is the press release. The second page states,

17 from Ira Shapiro -- keep in mind the price was at 694 in July,

18 it's now almost down to \$2. He's saying, if we continue on

19 the track we're on, I believe it will achieve our revenue and

20 profit goals that were previously disclosed. We believe we

21 have access to a large market of potential students which we

22 estimate to be over 40 million people. This is Government

23 Exhibit 172-8. That's a misleading statement. Their stock

24 prices crater, their company hasn't achieved anything, if you

25 look at their financials, and he's saying now to the public

SUMMATION - MR. HEIN

3512

1 we're going to take off here to build the price back up as
2 part of their pump.

3 What happens the next day? As we explained, UTC
4 time in the summer it's five hours ahead of East Coast time,
5 so this is about 8:30 in the morning before the market opens.
6 What does Discala write to Bell? Ira buying 25,000 today and
7 announcing. Discala told you yesterday he didn't know
8 anything about these press releases, they were all separate
9 from him, he didn't influence them. He knows before the
10 market opens that Ira Shapiro is putting out a press release
11 stating his confidence in the company.

12 Here is that press release, August 27, 2013,
13 Government Exhibit 177-10, the day after the last one because
14 this is where they're pumping the stock. He says: I continue
15 to believe that CodeSmart is the premiere ITEN in education.
16 This stock purchase of mine, which you can see in the first
17 paragraph, is an \$80,000 stock purchase on behalf of Ira
18 Shapiro. This stock purchase is symbolic of my confidence in
19 the company and its mission. It's not symbolic of its
20 confidence. The company has tanked. The company hasn't
21 gotten anywhere. This is misleading. This is false. This is
22 to drive buying in the stock. They put this out in an 8-K the
23 same day. This is a false SEC filing. Stating that he's
24 buying the shares because of his confidence in the company.

25 Why else is it false? By the way, it's another

SUMMATION - MR. HEIN

3513

1 overt act that we'll go through furthering the conspiracy.
2 Why is it also false? Because what happens. That money, the
3 \$80,000 Ira Shapiro spent because it was symbolic of his
4 confidence as CEO of the company. Who provided that money?
5 Fidelis Holdings, AJ Discala's company. He transferred over
6 that money and you heard this from Marleen Goepel. She told
7 you about that day where she said AJ Discala told me to
8 transfer money to Ira Shapiro right after this press release,
9 right after Ira Shapiro says he bought this money for himself.
10 And here Shapiro received it. 81,278. That's the transfer
11 from AJ Discala to Ira Shapiro.

12 So what happened here? I submit to you what
13 happened was Discala said we need to pump this stock back up.
14 He said, Ira Shapiro, you're putting out a press release
15 saying you have confidence in this company as CEO and you are
16 buying \$80,000 worth of stock and that's really going to get
17 the stock to climb. Bell and Josephberg and others can go to
18 their clients and say, look, at what the CEO is doing, you
19 have to buy in this thing, I'm going to buy it for you. But
20 Ira Shapiro doesn't even have that money, he's not paying for
21 it. AJ Discala is funding it. He's paying him from Fidelis,
22 from his company, to Ira Shapiro.

23 So here is this pump and dump two. As I said, it
24 started at 219. What did you see those press release
25 August 26th and August 27th is when you saw those. And look

SUMMATION - MR. HEIN

3514

1 at the volume of trading in those nine days. 382,000,
2 226,000, 176,000, and on August 26th and 27th the stock price
3 continued to climb until 460 on August 30th. Then what
4 happened when they couldn't keep this manipulation together,
5 it plummeted to 215.

6 And Bell told you why they couldn't keep this
7 manipulation together because it relies on both sides working
8 together. It relies on the selling and the buying and if
9 there's any problems that come in there, if there's people
10 selling out of turn, which Bell told you he started doing in
11 late June because he wanted to get his money too, if there's
12 that happening, if you can't buy in your clients' accounts
13 because they're all complaining, what happens to that stock
14 price? It plummets. That's what happened after July, that's
15 what happened here after August 30th, because this is an
16 artificial controlling and rigging of a company stock price
17 and it works if the co-conspirators are all working together
18 but it falls apart when issues come up, which they inevitably
19 do.

20 Here on Government's Exhibit 196-8 this is that
21 period you saw here on the left side of the chart. Again,
22 rigged prices, match trades. You can see how they mirror each
23 other on those first few days. You can see how they had some
24 success working that price, continue to work that price to
25 August 30th of 460. Take a look at the right side, that's

SUMMATION - MR. HEIN

3515

1 where the price is falling again because they're not matching
2 their trades. You even have some days where both accounts,
3 the sellers again being Discala, Wexler, and the buyers again
4 being Alamo customers of Matt Bell's, Halcyon customers of
5 Craig Josephberg, some days in September when the price is
6 falling they're both on the buying end because they're
7 desperately trying to get the price up to buy but it's falling
8 deeper because they're not able to match like they have
9 throughout the scheme.

10 Jamie Sloan, what did she explain? She explained a
11 very important point about these schemes and it's the same
12 point that applies to Cubed, when we get there. She was
13 asked: So I wanted to ask, is it a good thing for investors
14 if you keep a stock price artificially high and they don't
15 know about it? And she said, no. Why not? Because if the
16 stock price is artificially high, if the price is high based
17 on trading activity and not a merit of the company, then it
18 will crash if it's not based on the actual company.

19 She asked, what happened to ITEN. After the
20 manipulation ended, it plummeted.

21 These manipulation schemes for CodeSmart and later
22 Cubed, are not to protect the company, they are to make huge
23 profits at the investors' expense. And once those
24 manipulators, once the defendants have made those profits, if
25 they don't keep their manipulation going the stock price

SUMMATION - MR. HEIN

3516

1 plummets and everyday investors who are misled into investing,
2 they lose their money. But the defendants, the fraudsters
3 have already made huge profits on those shares they got for
4 nothing and they sold off to victims.

5 Profits at investors' expense. That was the last
6 point I initially introduced to you when I talked about
7 obtaining control and the importance of it, artificially
8 inflating the price and the fact victims then lost money as a
9 result.

10 Co-conspirators in CodeSmart made huge profits.
11 Government Exhibit 195-1 and 195-2. Discala made \$2.2 million
12 off this manipulation of CodeSmart. Goepel, and that's
13 Discala, Goepel's account because he used it made 600,000. In
14 total \$2.8 million he made off of this manipulation in
15 CodeSmart.

16 Marc Wexler, who you heard from, he made
17 \$2.2 million because he also got his shares cheap and he also
18 was selling with Discala in those early periods.

19 Matt Bell made about \$560,000 selling his own stock
20 in to this manipulation scheme for a profit.

21 Craig Josephberg, the Garper account. He made
22 almost \$700,000. And that came all at the expense of victims,
23 of victim investors who were told by the defendant and their
24 co-conspirators that this was a good stock to invest in. It
25 had a strong product and strong demand. They lost a lot of

SUMMATION - MR. HEIN

3517

1 money.

2 Alamo customers, Matt Bell's customers. You heard
3 about all their complaints, all the money they were losing
4 when Matt Bell had been putting them in the stock and the
5 stock plummeted.

6 Halcyon customers, Craig Josephberg's customers,
7 Sloan's customers, they lost a ton of money because of what
8 Discala and his co-conspirators were doing.

9 And you heard from a few individuals. Stanley
10 Craig, you remember him up here, the first victim witness you
11 heard from, about 77 years old, Memphis, Tennessee. He told
12 you that Craig Josephberg kept calling him, cold calling him,
13 telling him to invest in this company, CodeSmart. And
14 eventually he gave him a few thousand dollars to invest, and
15 he lost that money.

16 Edward Custer. He told you as well, Craig
17 Josephberg kept calling him, calling him, eventually gave him
18 a few thousand dollars to invest and what did he find out one
19 day that Craig Josephberg had stuffed this account into
20 CodeSmart. He didn't want to invest in CodeSmart, he never
21 brought it up with him, but he stuffed his account and he lost
22 that money.

23 Stephanie Conti, you heard from her, from New City,
24 New York. Testified that Ira Shapiro convincing her and her
25 husband that CodeSmart was going to take off, they should

SUMMATION - MR. HEIN

3518

1 invest their savings in it. She put \$28,000 in it and lost
2 all of it.

3 Here is Stanley Craig. Mr. Craig, would it have
4 been important to your investment decision to know that
5 individuals were artificially inflating the price of
6 CodeSmart? Yes, sir.

7 Would you have invested if you had known? No, sir.
8 You don't step into a boat when you see a hole in the bottom
9 of it.

10 What kind of financial impact did losing \$7,000 have
11 on you? I lost 7,000. I saved that. You know, money doesn't
12 grow on trees. That's Craig's testimony at 967, 68.

13 And here is Stephanie Conti. She was asked: You
14 saw from the documents where you stated you invested 26,000 --
15 28,600 in CodeSmart. How much of that money did you lose?
16 Everything.

17 She was asked would she have invested had she known
18 about this artificial inflation? She said no.

19 Why wouldn't you have invested? This was my kids'
20 future. My oldest son right now has college debt, my middle
21 son has college debt, my daughter, who is not yet in school,
22 will have college debt.

23 What kind of financial impact did losing the 28,600
24 have on you? It meant everything. It was money that, you
25 know, that I worked since I was 14 and when I was able to

SUMMATION - MR. HEIN

3519

1 participate in the company Vanguard or 401(k) I saved. It was
2 going towards my children and it was basically for nothing.

3 This was all AJ Discala and his co-conspirators'
4 artificial manipulation of CodeSmart, misleading investors,
5 these people lost money. Stephanie Conti lost money she would
6 have used for her childrens' education. That's Conti at 1932,
7 33.

8 Now, Discala's manipulation of shares of Staffing
9 Group and StarStream. As you saw, Staffing Group and
10 StarStream are not charged separately with a substantive count
11 like CodeSmart and Cubed are. Meaning that Count Three and
12 Four are securities fraud counts of CodeSmart and Cubed,
13 Staffing Group and StarStream are charged on some of the wire
14 counts and on the conspiracy counts. We didn't spend as much
15 time on it, but the evidence you did see showed you that
16 Discala and his co-conspirators did the same thing to Staffing
17 Group and StarStream.

18 Government's Exhibit 196-15. This is a stock price
19 and trading volume chart for StarStream. Take a look at this
20 brief period here where Discala was getting in with his
21 co-conspirators to manipulate the stock. On May 7th, 2014,
22 the closing price was at 30 cents. On May 8th -- excuse me,
23 10 cents. On May 8th it was at 15 cents. Then on May 13th,
24 five days later, it hit an intraday high of a dollar five and
25 closed at 80 cents. So from May 7th to May 13th it went from

SUMMATION - MR. HEIN

3520

1 10 cents to 80 cents, eight fold increase and that wasn't as a
2 result of a normal market conditions of people buying in the
3 stock. It was the result of Discala's manipulation of the
4 stock. And you see that here in these calls.

5 Now, before we play this call, this is Count Seven.
6 This is one of the wire fraud calls. As I said to you, each
7 wire fraud call, I expect the judge to tell you, that in
8 furtherance of the fraudulent scheme is itself a crime. So
9 it's itself a count. When you listen to this call you'll see
10 this call was in furtherance of the conspiracy to manipulate
11 StarStream. Check the date out, May 9th call. And I just
12 went through with you between May 7th and May 13th, 2014, the
13 stock price grew eight fold and this is right in the middle of
14 that manipulation.

15 (Audio recording played.)

16 This call tells you exactly what Discala wanted to
17 do and did do with StarStream, that they're really going to
18 steal this stock. What does he say? He wants to buy it all
19 up right now and then he says and then we're going to take it
20 to a dollar. They're going to buy it all up cheap as they are
21 and then they're going to work it up to a dollar. That's the
22 conspiracy here, to work this price up. He doesn't care about
23 this company. Listen to how he talks about -- listen how he
24 speaks to Victor Azrak, who you heard from, another
25 accomplice, another individual who pled guilty, who told you

SUMMATION - MR. HEIN

3521

1 about his conspiracy with Discala and Kylene Cane. And this
2 is what he wants to do.

3 Hear another call on June 12th, 2014. This is Count
4 Eight, a wire fraud call. And I should mention, for the
5 record, Government Exhibit 198-74 is the exhibit in Count
6 Seven, that's the wire call. Here's another StarStream
7 related count.

8 (Audio recording played.)

9 So Jon Arlo, Jon Arlo worked for Darren Goodrich at
10 BMAC Securities. Darren Goodrich was another corrupt broker.
11 You saw in the text messages with Bell talking about Darren
12 Goodrich of BMAC and helping them as a market maker close the
13 spread and tell them when to trade. And then you saw him
14 feature prominently in the Cubed conspiracy, Darren Goodrich.
15 And here Discala is talking to Jon Arlo, who works with him,
16 about SSET. And when he says, Arlo says, 43 by 50. Discala
17 says, all right, go 44, it's only a thousand.

18 So when they say 43 by 50, and you heard this --
19 Jamie Sloan probably explained this in the most detail, that's
20 the spread. What the spread means is the spread between a bid
21 and an ask on the screen. You saw that screen. And what
22 Jamie Sloan told you is it always looks best when that spread
23 is as small as possible. Because if you have a real
24 legitimate company, a company that's trading a lot in the
25 stock market, an Amazon, et cetera, that spread is going to be

SUMMATION - MR. HEIN

3522

1 almost nothing, maybe a penny because it's constantly being
2 traded, sold and bought and those are going to be close to
3 each other. As you'll see from some of the calls here, all
4 these stocks that Discala has manipulated, there's a huge
5 spread. Here 43 cents on the bid and 50 cents on the ask.
6 What's that telling you? That there's not much volume, people
7 aren't really trading. The only ones trading are these
8 conspirators, Discala and his team. And Discala, as he
9 said -- you'll see it on calls, he cares about optics. He
10 cares about getting that spread tighter so that it looks to
11 investors like this is a company that's really trading.
12 People are really buying and selling and it's liquid and it's
13 worth investing in, but that's all a farce. He's artificially
14 rigging that.

15 And so you'll see calls to individuals like BMAC,
16 who is a market maker. And by market maker, BMAC, Glendale
17 and VFIN, you've seen. Market makers part of their job is to
18 buy and sell to keep a stock going. So they have the power to
19 put in bids and asks and look at that screen to keep that
20 spread tighter. That's why he's dealing with them, that's why
21 he's dealing with Darren Goodrich and Arlo telling them to
22 close that spread, bid this, ask that. This is all artificial
23 rigging prices. This is not normal market conditions. And
24 that's what he's doing here 43 by 50 and Discala says, all
25 right, go 44. Neither of these individuals is trading in the

SUMMATION - MR. HEIN

3523

1 stock in any way based on its merit, they're trading on it to
2 manipulate it. This is Count Eight, Government
3 Exhibit 198-52.

4 Now Count Nine.

5 (Audio recording played.)

6 You see the same thing going on here as you did in
7 the previous call. This one is Craig Josephberg, the corrupt
8 broker at Halcyon, they're talking about StarStream. They're
9 talking about what the spread is, talking about how to close
10 it. You saw them say here, we own it all. They're
11 controlling this price, they're buying it up and they're
12 walking it up. And this, like the other two counts you saw of
13 wire fraud, are in furtherance of a fraudulent scheme to
14 manipulate StarStream.

15 Government's Exhibit 196-17. This is the Staffing
16 Group. Here, again, it is a trading volume and stock price
17 chart and you see Discala's manipulation between May 7th and
18 May 30th. The stock price is at 25 cents, he gets it to 31
19 and then by May 30th to 42 cents.

20 Here's is the call, Government Exhibit 198-12,
21 showing that.

22 (Audio recording played.)

23 (Continued on the next page.)

24

25

SUMMATION - MR. HEIN

3524

1 MR. HEIN: So what you do see in this call, this is
2 between Victor Azrak and Discala. They are talking about how
3 to manipulate TSGL, the Staffing Group, and also mentioned
4 SSET, which is Star Stream, the manipulation of that as well.
5 You see the mentions of BFIN, BMAC, those are the market
6 makers. BMAC being the place where Goodrich works.

7 What Discala is trying to get Azrak to do is to set
8 a floor, to build this price off, that's why he says VFIN. In
9 VFIN put in 20,000, not held, 20 cents, good till cancel; in
10 other words, it's going to stay there until it cancels. Once
11 he sets the floor he doesn't want the price dropping. So he
12 says high 20,000, put that bid in, let's keep that floor so we
13 can manipulate the stock and ensure that it doesn't fall. All
14 artificial manipulation.

15 He asked about the spread 22 81 by 30. So 22 cents
16 by 31. He wants to close that spread and wants to set a floor
17 so it doesn't fall below that. That right there is the an
18 example of what they did to manipulate the Staffing Group.

19 You also saw dozens of messages, text messages,
20 between Bell and Discala talking about manipulation Star
21 Stream and the Staffing Group, where to bid, what they were
22 trying to do. That's evidence of the conspiracy to manipulate
23 the Staffing Group.

24 Let's turn to Cubed. Again, the Cubed scheme
25 involved both defendants AJ Discala and Kyleen Cane. I'm

SUMMATION - MR. HEIN

3525

1 going to spend the remainder of today on Cubed and what did it
2 involve.

3 Here Cane obtained and concealed and controlled over
4 all Cubed free trading shares. We talked about Discala
5 filling that role for Code Smart. Here Discala was so
6 excited. We saw the text messages, you've seen the calls to
7 bringing Kyleen Cane into this conspiracy. Ofsink was no
8 longer the lawyer, it's Kyleen Cane. He told Bell, I have
9 amazing new counsel, I'm so excited about it. He's not
10 excited about bringing in a new lawyer because she's good at
11 SEC filings. He's excited about Kyleen Cane because of the
12 escrow account that she has set up, the ability to control all
13 of the shares, one person.

14 You saw what happened with Code Smart. Code Smart
15 fell apart. You've seen -- we've discussed it. We've seen
16 why. But a big reason why it fell apart, you heard this from
17 many witnesses, Bell, Sloan and others. A big reason why it
18 fell apart is because Discala didn't have full control of all
19 of the shares, right. He had Fidelis and Omni View and his
20 and Goepel for himself. Then he had people he knew that had
21 the lock out/leak out agreements. Bell told you he broke out
22 the lock out/leak out agreement, he started selling it. He's
23 looking at it and saying, Discala is making all this money
24 while he's selling and I'm buying for my clients, I don't want
25 to miss out, I'm going to start selling. So people broke into

SUMMATION - MR. HEIN

3526

1 that and they messed up the scheme, because they didn't have
2 full control.

3 Discala was so excited about Cane joining the
4 scheme. She had an upgrade, something special, an account
5 where she's the only one who holds all of the shares. She can
6 control them. And she can sell them off at her pace. That
7 will ensure that you have a gradual steady pump and dump and
8 make the most out of the scheme. We'll go into that detail.

9 She takes control, and just like Discala did in Code
10 Smart, she concealed that control. Why, because she didn't
11 want to get caught. She knew she was running a fraudulent
12 scheme. Discala, Cane and others conspired to artificially
13 inflate the price. She gained the control then they inflated
14 the price together. Finally, just like Code Smart, victims
15 lost a lot of money.

16 Let's talk about Cane's control of Cubed free
17 trading shares. The first important piece of this control is
18 Cane Clark, Kyleen Cane's law firm, formation of Northwest
19 Resources. You heard a lot about Northwest Resources. This
20 was the shell company used to bring Cubed to make it public.
21 First Independent was used for Code Smart, then Northwest
22 Resources was used here.

23 Who provided that shell? Kyleen Cane provided that
24 shell. Why is it so important to the scheme? Because all of
25 those free trading shares in Northwest Resources were held by

SUMMATION - MR. HEIN

3527

1 fake shareholders; in other words, Kyleen Cane held them all.
2 Those same fake shareholders, i.e., people who didn't get
3 their certificates, who didn't actually own the shares but
4 who's name were on there, were the same fake shareholders in
5 Cubed, that's what enabled her to carry out her scheme through
6 the escrow account.

7 How do you know all this? Because the witnesses and
8 the documents -- the witnesses you heard from and the
9 documents you've seen. Who did you hear from? Wesley Smith,
10 you remember Wesley Smith. He came here from, he actually
11 lives in North Carolina now but lived in Las Vegas back in
12 2011, 2012. He told you that Joe Laxague, one of the four
13 lawyers at Cane's law firm, he dealt with him on making these
14 shell companies, creating these fake mining companies. He
15 told you he had done another one with Joe Laxague called
16 Remington, another fake mining company shell company, where he
17 had recruited Wesley Smith to help set it up to help get
18 shareholders. He told Joe Laxague said, I'll pay you money if
19 you can help me form this company called Northwest Resources a
20 fake mining company, no business, get it on the books, we'll
21 sell it later as a shell and I'll pay you \$10,000.

22 Wesley Smith told you what was he assigned to do
23 with that money, find a fake CEO of Northwest Resources and
24 find fake shareholders, i.e., people who are going to sign
25 subscription agreements and say, yeah, I own some shares in

SUMMATION - MR. HEIN

3528

1 Northwest Resources then have nothing more to do with that
2 company. Hand those over, Kyleen Cane has them, and they are
3 the shareholders who become the Cubed shareholders that she
4 can control to leak out shares in the market.

5 Wesley Smith told you that he found some
6 shareholders, family members, friends. And then he told you
7 that he went to his barber at the barber shop in Las Vegas. A
8 guy named Gary Gray Scoggins. And that barber signed up fake
9 shareholders himself.

10 Wesley Smith told you he was paid \$10,000 once the
11 shell company Northwest Resources was sold for his help to Joe
12 Laxague on this.

13 You heard from Taylor Edgerton, the fake CEO that
14 Wesley Smith found, childhood friends. He found Taylor
15 Edgerton and said, I did this before with Joe Laxague, one of
16 the four lawyers the Cane Clark, Kyleen Cane's law firm. He
17 said he can get paid \$20,000 for being a CEO once they sell
18 it, all you have to do is fill out paperwork, Joe Laxague will
19 write it up. And Edgerton agreed.

20 He told you got \$20,000 in cash to start the
21 company. He went to the bank and put it in the Northwest
22 Resources and they set it up. Then he told you that he was
23 tasked with finding some fake shareholders. He and Wesley
24 Smith went out and found those shareholders. Then once
25 Northwest Resources was sold he got paid \$20,000 for doing all

SUMMATION - MR. HEIN

3529

1 of this.

2 Again, why did we go through and why did we put the
3 witnesses up, and why are we explaining it now, because it's a
4 critical piece of the fraud off the concealment that Kyleen
5 Cane led here in order to get this escrow to make it that she
6 controlled all those shares. These fake shareholders signed
7 up, didn't know anything about it any more, leaked them out as
8 Cubed shares to make the Cubed scheme work.

9 Northwest Resources was set up, here is Government's
10 Exhibit 196-20. 8 million restricted shares, shares you
11 couldn't trade on the market at that point. Taylor Edgerton,
12 CEO, he got the shares. When I say he got the shares, he
13 signed up for them. He testified he never got a stock
14 certificate. They weren't his shares, but he told he had
15 8 million shares. Then the 3 million free trading shares,
16 from thirty shareholders. The individuals Taylor Edgerton and
17 Wesley Smith and found, the fake shareholders to make up the
18 3 million.

19 Here is a critical piece of evidence Government's
20 Exhibit 185-8. What does that state up here in paragraph
21 five? This is a letter from Cane Clark's law firm that Joe
22 Laxague drafted regarding FINRA. FINRA is the regulatory body
23 for brokers. They asked questions about the company, who are
24 the shareholders, when they are getting it registered. They
25 sent this to a guy David Lopez, Spartan Securities Group, to

SUMMATION - MR. HEIN

3530

1 answer some of these questions, a broker they were working
2 with.

3 It says, our initial public offering was closed
4 April 2011, we have a total of 3 million shares of common
5 stock. Those are the 3 million free trading shares of
6 Northwest Resources. They were sold at .006 per share. Here
7 they say in the letter, are the 30 Northwest Resources free
8 trading shareholders.

9 What do you know? You know that none of those
10 people got shares. None of those people were actually
11 shareholders, the free trading shareholders of Northwest
12 Resources or of Cubed. I'll walk you through why you know
13 that.

14 These individuals highlighted in yellow. Wesley
15 Smith testified these are the individuals he found to be fake
16 shareholders. What did he do? He went to them, he said here,
17 you're going to have \$40, \$50, \$100 to sign this paperwork.
18 Where did he get that money? Joe Laxague from Cane Clark gave
19 him that money. He said, I'm going to pay you this money,
20 you're going to sign these subscription agreements. You saw
21 those. I'm buying 100,000 shares of .006. Each of those
22 people filled out that paperwork. And then Wesley Smith
23 provided a Money Gram for \$600, that they didn't pay, saying
24 here's the payment for the shares. Fill this out, take your
25 \$40, \$50 and you'll be on your way.

SUMMATION - MR. HEIN

3531

1 Wesley Smith explained who all these people are.
2 Most of them are family members, and some of them are friends.
3 A couple of them he said he couldn't remember whether Bobby
4 Watkins, Craig Means, whether she or his barber, Gray
5 Scoggins, signed those people up.

6 In the green, these are the people who Taylor
7 Edgerton found, co-workers Terrence Migliaozzi, Ramon Molina.
8 He told you the same thing, gave them some cash, sign this
9 paperwork, you don't have to do anything else just free money
10 to you, you don't have to pay the \$600 for the shares just
11 sign up that you're a shareholder and we'll pass it along. I
12 submit to you that's what happened with all of the rest of
13 these people, but that Gray Scoggins, the barber found them.

14 Who do I put in red Marche Godffrey. You heard from
15 Marche Godffrey. You remember, he came from Las Vegas, wore
16 sun glasses up here until he took them off when he testified.
17 He told you exactly what happened.

18 He said his barber in Las Vegas, who he knew as Fat
19 Mac. And what did you see when Special Agent Voulgaris
20 testified, put in a photo, a driver's license ID, of Gary
21 Scoggins and that photo matched exactly who Marche Godffrey
22 identified as Fat Mac, the barber. That barber, Gary
23 Scoggins, who you see here bottom left, he was one of the
24 shareholders. Now Gary Scoggins in the barber shop said, hey,
25 Marche, I'll give you \$40 cash just fill out this paperwork,

SUMMATION - MR. HEIN

3532

1 then you're done. Says you're a Northwest Resources
2 shareholder and own 100,000 shares. Take this paperwork, fill
3 a few things out, here is a Money Gram for 600, you don't need
4 to pay that, it's not yours, and you can go about your day.
5 That's exactly what he testified. Did that happen? He didn't
6 hear another thing from Northwest Resources, never got a stock
7 certificate. Just like Wesley Smith testified.

8 And none of those people in yellow he signed up got
9 stock certificates, just like Taylor Edgerton said, I
10 understood those two people didn't get stock certificates.
11 Look how many people are testifying that they never got stock
12 certificates. And Marche Godffrey told you he never got one.

13 What does that mean? He never owned those shares,
14 those weren't his shares. Those are the shareholders that
15 started Northwest Resources and became the Cubed shareholders,
16 sitting in the escrow account of Kyleen Cane to control.

17 Here is 185-25, an invoice from Cane Clark, Kyleen
18 Cane's four-person law firm that she ran, billed to Northwest
19 Resources, Taylor Edgerton at that UPS store box that you
20 heard about. And Joe Laxague sent them, he sent them
21 regularly. What did Taylor Edgerton tell you about this, that
22 Joe Laxague said, don't worry about it, you don't need to pay
23 them. Why? This is all a fraud.

24 What do you see here bottom left, these are the
25 rates, Joe Laxague, \$325 an hour; Gunter and Clark \$475; and

SUMMATION - MR. HEIN

3533

1 Kyleen Cane \$500 an hour. She ran this law firm. She by far
2 had the highest billing rate.

3 What did Taylor Edgerton tell you that Joe Laxague
4 said at that meeting in Las Vegas, I'm trying to make partner
5 in this law firm. That's what he's doing for Kyleen Cane,
6 helping finding fake shareholders, setting up these companies.

7 Here, these text messages are critical. These are
8 the texts that Joe Laxague and Kyleen Cane have about selling
9 Northwest Resources. This is March 2013 so it's a couple
10 years after Northwest Resources was set up. As you know from
11 Taylor Edgerton, Northwest Resources had nothing going on, a
12 mining company, a fake mining company. It wasn't set up as a
13 business, it was set up to be sold. Kyleen Cane is directing
14 Joe Laxague on the sale of Northwest Resources.

15 Joe Laxague writes Kyleen Cane, Exhibit 129-92, I
16 showed Jeff Chung profile of Northwest, Remington, the fake
17 mining company, and Thompson he wants prices to buy the shell
18 company. Northwest is not DTC, the other two are. Kyleen
19 Cane says okay. Jeff is a slow, hard sale.

20 Kyleen Cane's witness, Mr. McCoy, told you that
21 Kyleen Cane was in the business of selling shell companies.
22 This is her business, this is what she's doing. She's dealt
23 with these sales before, Jeff is a slow, hard sale, she sold
24 shell companies to Jeff before. What is important here?
25 Northwest is not DTC. You heard from DTC the Depository Trust

SUMMATION - MR. HEIN

3534

1 Company, that's where you go to make your shares tradeable so
2 you can put them in DTC and get that CD and code label and now
3 you can trade. So they are talking about which of these
4 shells are already in DTC, which ones are ready to go, which
5 are held. Laxague is telling her not DTC.

6 Then here, June, still talking about Laxague says,
7 Lazar wants to know acting price for Northwest non DTC and
8 Thompson. Kyleen Cane responds, I'm 90 percent sure he's
9 dicking you around. Tell him 300 for both and we deliver
10 fresh DTC with Northwest. Kyleen Cane is leading this charge.
11 She knows exactly what is going on. Northwest is another fake
12 mining company, a fake shell company. She's telling him they
13 got to pay \$300,000 for this shell of Northwest. We'll
14 deliver fresh DTC; in other words, she will take those fake
15 shareholders' shares and send them to the Depository Trust
16 Company so she can start selling them.

17 She is saying here, the person buying this, I can
18 give you fresh DTC. I can we can get it out there so you can
19 sell them. She clarifies, 300K each.

20 Then Joe Laxague, should I quote Burton 300 for
21 Northwest Resources, too? Who is in charge here? Not Joe,
22 he's asking the boss, what are we quoting these companies for.

23 129-97 Laxague writes, David Lazar wants a price of
24 Northwest resources NWR non-DTC sell. What should I quote
25 him? She says 285. Keep in mind this is October 2013. Last

SUMMATION - MR. HEIN

3535

1 ones were in March 2013, and the one we just saw was
2 June 2013.

3 They are having a hard time selling this shell
4 company. That corroborates exactly what Taylor Edgerton told
5 you. He had the meeting in 2013 periodically with Joe Laxague
6 saying we're having a hard time selling the shell companies.
7 Kyleen Cane and Joe Laxague are working together trying to
8 sell Northwest Resources and are having a hard time.

9 Here is what I've been talking about, this is all so
10 important because those fake Northwest Resources shareholders
11 become the fake Cubed shareholders. Here are the texts --
12 excuse me -- let me back up for one moment.

13 How do they become a Cubed shareholders? Who
14 ultimately buys the shell of Northwest Resources for their
15 manipulation scheme? AJ Discala and Marc Wexler. And when
16 they buy that shell, AJ Discala buys it because he's dealt
17 with Kyleen Cane before, as you'll see from the text messages
18 coming up, he's excited to have her back. He's excited to
19 work with her, work with her escrow scheme here. They buy
20 that shell to complete this.

21 Here you have the text messages, January 2014 now.
22 Discala writes to Cane, what a day can't wait to have you back
23 GP. You heard Agent Voulgaris testify from his investigation,
24 GP is Guardian Princess, that's how he referred to Kyleen
25 Cane. She says glad to be back. Discala says, not as glad as

SUMMATION - MR. HEIN

3536

1 me.

2 Why is he so happy? The same reason he's texting
3 Bell and telling others, Kyleen Cane has this escrow account,
4 this account with these fake shareholders so she can control
5 all the shares and nobody to get in her way.

6 Here is the purchase. Here is the purchase of that
7 shell. Discala through Omni View pays 225,000; Marc Wexler
8 pays 100,000. What does that say, you are hereby directed to
9 release and distribute all of said funds as directed by
10 Oxbridge Technology Partners Inc. in the above referenced
11 escrow.

12 This the escrow account they are buying. They are
13 buying the shell along with the escrow that Kyleen Cane has
14 set up. Oxbridge Technology, which you'll see later, a
15 company Kyleen Cane is using to conceal all of this, states
16 here in this document, we'll be transferring. What is going
17 on around the same time, March 14, about a month-and-a-half
18 later, before the merger has taken place, he says to Kyleen
19 Cane, because they are still working together on this, please
20 call me on Northwest Resources. George is saying we should,
21 AK the name change now to explain why it doesn't show up in
22 the data SOS records. George. George Castillo from Glendale,
23 we'll go through him in detail.

24 He's saying we should get AK out to change the name
25 from Northwest to Cubed; that happens on this day, March 14,

SUMMATION - MR. HEIN

3537

1 129-103. The company becomes Cubed. They have forward stock
2 of 2.67 shares.

3 Here now we're coming up shortly on our break. This
4 is also an important document in understanding the formation.
5 These are Empire Stock Transfer records. Records that you
6 heard a witness discuss, Empire Stock Transfer is a company
7 that holds stock certificates. Stock certificates for Kyleen
8 Cane's company -- her law firm uses them to hold stock
9 certificates of companies.

10 Here on March 18, a few days after this stock split,
11 goes to Empire Stock Transfer and picked up the stock
12 certificates for all of these 30 fake shareholders. Picks it
13 up. Why is that important that he picks up the stock
14 certificates? Because they go back to Kyleen Cane. Stock
15 certificates is what you need to own the shares, what you need
16 to give to provide a DTC so you can trade those shares. Who
17 has all the certificate? Kyleen Cane does. She gets all
18 these stock certificates so none of these individuals listed
19 on here, none of the 30 individual can trade any of their
20 shares. They are out of the picture.

21 She picks them up. If we went through this list,
22 this has broken up in the middle to show it to you, but it's
23 the same individuals Taylor, Marche Godffrey, Marcus Cohen.
24 The one different individual here right in the middle, David
25 Ben-Bassat. That's because Kyleen Cane already transferred

SUMMATION - MR. HEIN

3538

1 one of those fake shareholders to David Ben-Bassat, her close
2 friend, so she can start selling those as part of the scheme.
3 That's what they are picking up here. They have to close the
4 loop on here.

5 What happens next? Taylor Edgerton, remember how he
6 had the 8 million restricted shares as CEO, he's now no longer
7 the CEO because Northwest Resources is being sold. But after
8 that 2.67 stock split, the shares get split by 2.67, he had a
9 little over 21 million. Cane Clark wrote it up, such that
10 6 million of those shares canceled, disappeared. Another 15
11 restricted from Taylor Edgerton will be purchased to get him
12 his \$20,000.

13 This on the right, are the people/entities buying.
14 What is this so important, one of these buyers NPNC
15 Management, that's Kyleen Cane's company. She's buying
16 1 million restricted shares from Taylor Edgerton. And she's
17 buying them -- first here are the records showing you that
18 NPNC is Kyleen Cane's company. There's her signature. Here
19 are the records, 194-1.

20 Here is her check to Taylor Edgerton. Kyleen Cane
21 on the bottom right, her signature, stock purchase agreement,
22 she's buying 1,000 restricted shares, now with Cubed, for less
23 than a tenth of a cent, that's nothing. And Cubed, as you
24 saw, will start trading at five and go into the sixes even
25 reach seven. And that means she's got restricted shares worth

SUMMATION - MR. HEIN

3539

1 nearly \$7 million. She got them for essentially nothing by
2 paying a fake CEO, Taylor Edgerton, of Northwest Resources to
3 get them.

4 Again, not with her real name, because neither AJ
5 Discala nor Kylene Cane does anything in the real name. NPNC
6 Management, another thing to conceal.

7 Here is another check, this is from Cane Clark
8 escrow, same address as her law firm, same address as NPNC
9 Management. Here is \$800, that's for another guy's shares,
10 Branislav. There is another check to Taylor Edgerton. She
11 knows exactly what is going on. Paying off the CEO of the
12 fake company so she can have restricted shares to profit from
13 the scheme.

14 MR. HEIN: I think this might be a good time to
15 break.

16 THE COURT: Okay. Ladies and gentlemen, we're going
17 to take a ten-minute break. Keep an open mind. Do not
18 discuss the case amongst yourself or anyone else. We'll see
19 you in ten minutes.

20 (Jury exits the courtroom.)

21

22

23

24

25

SUMMATION - MR. HEIN

3540

1 THE COURTROOM DEPUTY: All rise. The court is back
2 in session.

3 Counsel for both sides present, including the
4 defendants.

5 THE COURT: Are you ready to resume?

6 MR. HEIN: Yes, Your Honor.

7 THE COURT: We advised the jury to get a couple of
8 snacks to tie them over until lunch.

9 MR. HEIN: Thank you, Your Honor.

10 MR. BINI: Thank you Judge.

11 (Jury enters the courtroom.)

12 THE COURT: Be seated, please.

13 Counsel will stipulate that the jury is present and
14 properly seated.

15 MS. JONES: Yes, Your Honor.

16 MR. ROSS: Agreed, Judge.

17 MR. RIOPELLE: So stipulated.

18 THE COURT: All counsel concur. Thank you.

19 Ladies and gentlemen, hope you had a chance to eat
20 that snack to fortify you a bit. We're ready to resume with
21 Mr. Hein in his closing argument on behalf of the United
22 States.

23 MR. HEIN: Thank you, Your Honor.

24 Ladies and gentlemen, when we left off the break, we
25 were on Government Exhibit 196-21.

SUMMATION - MR. HEIN

3541

1 This chart here shows the shareholders of Cubed.
2 First with the restricted shares. There are about 22 million
3 restricted shares of Cubed, 67 shareholders.

4 I showed you the chart prior where 15 million of
5 those were purchased were purchased off of Taylor Edgerton,
6 and DTC Management, Kyleen Cane's company held 1 million of
7 those restricted shares. But the more important part of this
8 chart is what's in the yellow and the green. The free-trading
9 shares. Because as you know, the free-trading shares is what
10 Kyleen Cane uses to sell into this manipulation scheme.
11 Here's why it's so important.

12 And know it's hard to read, but in the top left of
13 this chart, there's approximately 8 million free-trading
14 shares of Cubed. And that's because remember Taylor
15 Edgerton -- excuse me, you remember the 30 shareholders
16 initially from Northwest Resources bought 3 million shares
17 together.

18 Now, after the 2.67 forward stock split, there are
19 approximately 8 million free-trading shares. And why it's so
20 important is that Kyleen Cane held control of those entire
21 8 million in the escrow account.

22 And the green portion is important, and I'll big
23 deeper into this in the remainder of the presentation. But
24 these are the shares that she moves to be traded, moves to DTC
25 and Cede & Co. name so they are tradeable, so that she can

SUMMATION - MR. HEIN

3542

1 sell them as part of the manipulation scheme.

2 And the yellow, the yellow here on this chart are
3 the free-trading shares that she is still holding that she
4 hasn't released yet to be sold. And she controls all of them.

5 Now, we talked about concealment. I showed you
6 something similar for CodeSmart, where AJ Discala, his name
7 was nowhere to be found in the SEC file that stated who held
8 more than 5 percent of the company. The exact same thing with
9 Cubed.

10 Kylene Cane controlled the full 8 million
11 free-trading shares at approximately 30 million. That's more
12 than 25 percent of the company. And her name and her name is
13 nowhere to be found on Cubed's filing with the SEC about who
14 owns the stock.

15 As you see in the footnote, beneficial ownership.
16 The point is the public needs to know who has investment
17 power. Who holds these shares. Who really holds these shares
18 regardless of whether it's named or not. Kylene Cane isn't
19 mentioned on there, and none of these other entities are
20 mentioned on there as well.

21 Concealment. Why is concealment so important.

22 We saw what was so important in AJ Discala's scheme
23 where he had money in Marleen Goepel protecting and trading in
24 her account. OmniView and Fidelis, without his name as a
25 signator. It's because they're conducting an illegal

SUMMATION - MR. HEIN

3543

1 fraudulent scheme. And they don't want their names out there.

2 And that's exactly why Kyleen Cane has her MBAC
3 Management holding 1 million restricted shares. And that's
4 exactly why she holds these 8 million free-trading shares in
5 the name of those 30 shareholders; Marche Godffrey, Peter
6 Hirschfeld. He didn't know anything about this. But she has
7 his shares in his name still, but she is holding them. And
8 she's concealing that because she's operating under the radar
9 to not get caught.

10 Now Wexler. He explained to you his understanding
11 of his escrow account, of the holding of these free-trading
12 shares. And here's what he said.

13 He was asked: And so the deal structure change when
14 Ms. Cane became counsel for Crackpot.

15 He said: Yes, it did. It went from a reverse
16 merger into a publically-traded shell to investors who put
17 money into the deal for free-trading shares. And would now
18 own a percentage of the escrow account.

19 And there's the point. In CodeSmart, as you saw
20 from that chart, AJ Discala and the co-conspirators, they
21 actually got the free-trading shares. Matt Bell got a stock
22 certificate, and then you could sell those shares and destroy
23 the scheme.

24 With this escrow account, nobody actually gets any
25 stock certificates. Kyleen Cane's holding control of all of

SUMMATION - MR. HEIN

3544

1 it, as the free-trading shares of those 30 big shareholders.

2 And when you say nobody received shares in their
3 name that were held by Ms. Cane, what the type of shares are
4 you talking about?

5 Free-trading shares, Mr. Wexler says.

6 And what was your understanding of who came up with
7 this idea? Ms. Cane.

8 Wexler tells you on pages 2085-86: My understanding
9 was that shares, free-trading shares were controlled by
10 Ms. Cane, and when they were sold, the proceeds would then be
11 sent into an escrow account and then be distributed
12 shareholders from there.

13 When what was sold? The stock on the open market.

14 Who was supposed to be in charge of selling that
15 stock? Ms. Cane.

16 And that's how it was set up. She held the
17 free-trading shares. She would sell them out for profits.
18 And then the point of the escrow and the co-conspirators who
19 were involved and other investors the co-conspirators brought
20 in, they didn't know that this was some big scheme, they would
21 get these little distributions out of this escrow account.

22 And the point is, it's an upgrade. Because when she
23 holds all the shares, she doesn't have to worry about the
24 co-conspirators or other people getting in the mix and selling
25 their shares and hurting the price.

SUMMATION - MR. HEIN

3545

1 Jamie Sloan explained her understanding of the
2 escrow account similar. I believe the escrow account would
3 make it a lot easier to control the stock price. The problem
4 with ITEN, that's CodeSmart, is that too many people were
5 selling the stock. We're selling the stock. First AJ was
6 mostly selling it. But after that, the stock can be bought in
7 the open market, he couldn't control the selling so my
8 understanding the stock was in all -- if the stock was all in
9 one place with Ms. Cane, then the stock price would be easy to
10 control.

11 Now, let's start discussing it. We talked about the
12 control. We talked about concealment that Mr. Cane is leading
13 here. Now let's talk about her and AJ Discala and other
14 co-conspirators carrying out the artificial manipulation of
15 the stock.

16 Here are the free-trading shares. This chart here,
17 196-24, this is laying out for you who those shareholders were
18 that we saw in the yellow and green portion of that pie chart
19 we just looked at with their names. And if you look at these
20 names, you see up there Chad Washington at the top left, and
21 it goes on. Marcus. Marche Godffrey. Marcus Poe. All of
22 the names of those fake shareholders who had nothing to do
23 with this.

24 And you see in the blue -- even before Northwest
25 Resources official officially became Cubed, Kyleen Cane moved

SUMMATION - MR. HEIN

3546

1 stock from Chad Washington, I submit to you he's another fake
2 shareholder who had no idea what's going on the stock, and she
3 moved into the name of some old family friend, a man who dated
4 her mother for years, who you heard from, David Ben-Bassat.
5 Now, as you see, he had 267,000 shares. That's because that
6 2.67 forward stock split.

7 And she put it in there, in Ben-Bassat's name, and
8 she had Ben-Bassat set up his Glendale Securities account that
9 she controls under his name. Again, concealment. And then
10 she moved his shares to Cede & Co. under DTC so that they can
11 be traded and she can trade them on the open market.

12 And you can see on the far right of the chart, on
13 April 22nd, to Glendale Securities which George Castillo, a
14 corrupt broker with whom she was working with. And those are
15 the steps she took to get this manipulation scheme to work.

16 We'll go through the rest of this chart later, but
17 what we will see, too, is that Marche Godffrey, the gentleman
18 who testified, remember him, the sunglasses. He had no idea
19 what happened to his shares after he was paid \$40.

20 She later, in June, moved his shares to Cede & Co.,
21 because that was the next tranche of shares that she wanted
22 that she was going to release and start selling on to the
23 market. And JPMorgan, you heard an individual from JPMorgan
24 testify about those records.

25 Keep in mind when we look at the second column of

SUMMATION - MR. HEIN

3547

1 March 18, 2014, David Ben-Bassat. Under each of those names
2 is 267,000 shares. Those are each what AJ Discala will say in
3 calls he refers to as the escrows. There are five escrow as
4 out there. Five tranches of 267,000 shares that Kyleen Cane
5 can decide when she wants to release them into the open market
6 to be the selling portion, the rigged trading, to walk the
7 price up for her profit.

8 Now, here you have the records showing the transfers
9 made. Chad Washington. David Ben-Bassat. And here's this
10 what they call "irrevocable stock" where Chad Washington, who
11 I submit to you, had no idea what was going on here. And I
12 submit to you he didn't sign this document. He's giving his
13 shares to David Ben-Bassat, Kyleen Cane's close friend.

14 David Ben-Bassat told you he had no idea what was
15 going on. This is an individual who stood up here and
16 testified and said he cares deeply for Kyleen Cane, right? He
17 didn't want to be here and testify. But he told you: I had
18 no idea what was going on with my account. I did these things
19 as a friend of Kyleen Cane. These shares are being
20 transferred to him. He doesn't know that.

21 What does it say here at the bottom, who the bill
22 should go to? Cane Clark. Cane Clark's arranging all these
23 transfers. He transferred from Chad Washington to Ben-Bassat
24 as part of the scheme that Kyleen Cane is carrying out.

25 And here's an example of the one of the stock

SUMMATION - MR. HEIN

3548

1 certificates. David Ben-Bassat, for 267,000 shares. He
2 testified he never got the stock certificate. He didn't know
3 what was going on. This stock certificate Kyleen Cane sent
4 over to DTC so she could sell his shares.

5 Now, on the point of concealment, why is Kyleen Cane
6 selling these shares through David Ben-Bassat? Why isn't she
7 transferring from Chad Washington to herself? Because she's
8 doing something illegal. She's carrying out an illegal scheme
9 and wants it to be under someone else's name. That's why
10 David Ben-Bassat is used here as a pawn.

11 Now, Cubed went public on April 22nd, 2014. These
12 are the weeks preceding it, after its -- after its been merged
13 in, it now exists at Northwest Resources, but it's not trading
14 on the market. And Marc Wexler is writing Kyleen Cane on
15 March 28th. And he says: Great work and hustle, any word on
16 DTC?

17 As you see in a lot of these texts, as Marc Wexler
18 testified, he really wanted to get this conspiracy moving. He
19 want to get this manipulation scheme moving. At times faster
20 than Kyleen Cane wanted, because she is a cool, calculated
21 person who carries this scheme out at in gradual increments.
22 She doesn't want regulators to detect. She wants it to go
23 just as she knows it should. And he's asking her: What's
24 going on here? He says: Just need one trade to show it.

25 What does he mean there? He means we just need to

SUMMATION - MR. HEIN

3549

1 get one trade of Cubed stock out into the market at a certain
2 price to set that floor. Right, that price isn't going to be
3 based on anything under normal market conditions of what Cubed
4 is worth. We just need to trade out there. She responds:
5 I've been working with DTC all morning trading.

6 March 27th, what happened the next day. That is the
7 first trade in Cubed, march 28th, for \$5 for a volume of 200
8 shares. That trade is later canceled.

9 Now, why is that so important? Because that sets
10 the floor of Cubed. All of a sudden you get a 5-dollar trade
11 out there. Imagine how much all of these shares are worth
12 that individual holds. All of sudden there are 8 million
13 free-trading shares that Kyleen Cane owns worth \$40 million.
14 For 1 million restricted? Worth \$5 million. They are setting
15 this price and they're working their way up from here.

16 Who placed this trade? Documents in evidence show
17 that the individual who placed this trade, an individual named
18 Michele Plum. Where does she work? She works for Kyleen Cane
19 at Cane Clark, in an administrative position. She placed this
20 trade and then it was canceled. And it was to set that first
21 price of this stock, just as Wexler had said. We just need
22 one trade to show it, to show what the stock start up, and
23 then we move with our manipulation.

24 Now, Ben-Bassat. This is his Glendale Securities
25 account. Again he testified: I had nothing to do with these

SUMMATION - MR. HEIN

3550

1 accounts. Kylene Cane ran it. She told me what to call
2 George Castillo trade in at. And when I got these account
3 statements, I put them in a stack and I gave them to Kylene
4 Cane. Nothing to do with me. So she could review them.

5 Now in February 2014, before this scheme takes place
6 in March, this account, this account here at Glendale
7 \$300,000.

8 Now in March, after the 267,000 shares go into his
9 account that Kylene Cane puts in, it's worth 1.5 million. Why
10 is that? Because here Cubed says they bought for 267,000.
11 Those are the shares that Chad Washington originally had, fake
12 shareholder.

13 Now, the market price value at 5, because of this
14 canceled trade placed on March 28th, it's got a value of
15 \$1.3 million.

16 Now, here, a few weeks later, April 17th. Cubed
17 still hasn't gotten on the market and trading. And AJ Discala
18 is asking: When is this going to happen? And he says: I
19 really need it to trade. I got egg all over my face. Because
20 AJ Discala's been bringing in investors who are not aware of
21 what's going to happen with the stock. He's got other
22 co-conspirators, and he wants to get this manipulation scheme
23 going.

24 Any update on DTC? He wants to know when she's
25 going to start selling David Ben-Bassat's shares.

SUMMATION - MR. HEIN

3551

1 Kyleen Cane responds: Glen has instructions for
2 Monday morning. That's Glendale. That's George Castillo, the
3 corrupt broker with whom she's working.

4 And who did he have instructions from? He had
5 instructions from Kyleen Cane. Instructions from her as to
6 how the scheme is going to work and how much they are going to
7 sell, at what price and when. Because she's running this.

8 She says: I'll follow through Monday morning to
9 make sure instructions are followed.

10 Kyleen Cane is a leader, the leader of this Cubed
11 manipulation scheme. She's critical. She controls the
12 8 million float. She controls the free-trading shares. She
13 controls when they are going to be sold. And she is working
14 with AJ Discala and the co-conspirators to carry out the
15 scheme.

16 Discala writes to her on April 19th, two days later:
17 Three days from now is when Cubed starts trading. And he
18 writes: Make sure there's enough at 525. Don't want it going
19 any higher.

20 What does he mean there? He meant, hey, make sure
21 to get enough shares out there so we can walk this price from
22 \$5 to 525. But I don't want it to go any higher, I want to do
23 this gradually.

24 And she says: This is what we should talk about.
25 Not text. I'll call you tomorrow. Very important.

SUMMATION - MR. HEIN

3552

1 Step back. Use your common sense. What does Kyleen
2 Cane mean when she says: We she should talk about this, not
3 text. She doesn't want to create a record. She doesn't want
4 to create a record in texts or emails. And you'll see this in
5 most of the calls.

6 She doesn't want to talk to Darren Goodrich about
7 the escrow account and what it is on the phone. AJ Discala
8 will say in many emails: She doesn't want to talk about the
9 escrow. Why? Because it's illegal. And she doesn't want to
10 spread the word on that. And she does want to talk that
11 Darren Goodrich on the phone, she wants to meet with him in
12 person to discuss this illegal scheme that she set up. And
13 here, let's talk about it, not text. I don't want a record of
14 this.

15 And here's the trade. This is the trade chart.
16 Who's selling? The green bars at the bottom are from David
17 Ben-Bassat's account. That's what Kyleen Cane is selling
18 through David Ben-Bassat of Cubed shares starting April 22nd.

19 And look at those first four trading days and you
20 see exactly what we saw on CodeSmart, the max trades. The
21 volume on what she's selling and on the co-conspirators who
22 are buying almost identical.

23 Now, take a look at the accounts that are buying
24 that volume. Dounya Discala, AJ's wife. Joe Discala, AJ's
25 dad. Victor Azrack and his father. Matt Bell, a

SUMMATION - MR. HEIN

3553

1 co-conspirator. Marc Wexler, you heard from him. And these
2 other individuals who are your co-conspirators with AJ or, as
3 you see, we have certain victims in here: Igor Gefter,
4 Eliezer Zupnick. And they're buying because they have
5 accounts at Meyers Associates, where Jamie Sloan is a
6 co-conspirator. And they don't know what's going on here.
7 But Jamie Sloan is buying it for them. She's buying it for
8 them so they can make this manipulation scheme go.

9 Matched trades the first day. The other ones you
10 see there are rigged trading. And rigged trading is illegal,
11 just like rigged trading is. Rig trading means you've got
12 people who are selling and people who are buying in
13 coordination to walk the price up.

14 Government Exhibit 196-12. What you see here in the
15 red line, that's the stock price of Cubed, March 28th through
16 June 3rd. And you see how gradual that increase is in the red
17 line until May 23rd, the day that it spiked. And we'll talk
18 about it, and they try bring to back down.

19 It spikes on May 23rd and it continues to gradually
20 increase. That's the manipulation scheme that Kyleen Cane and
21 AJ Discala, co-conspirators, carried out.

22 And the bars. The bars show you of the volume. And
23 you'll see those first four days. It's almost entirely green.
24 That means the volume that Kyleen Cane was selling, she was
25 essentially the entire volume of what's being sold in the

SUMMATION - MR. HEIN

3554

1 stock. No one else is participating. She's walking the price
2 up by selling.

3 On the top left. David Ben-Bassat's account totals
4 over 103,000 shares in this period for the gross proceeds of
5 \$600,000. That's the money Kyleen Cane made from this.

6 Now, she was preparing to make much more when she
7 was arrested by the FBI, but that's the money she made from
8 this scheme up 'til now, at the expense of investors, of
9 victims.

10 This chart shows the prices at which David
11 Ben-Bassat's account controlled by Kyleen Cane sold on each of
12 those days.

13 What do you notice about it? It essentially
14 identically matches the stock price. That's because she's the
15 entire volume. She's pushing this price up. She's selling at
16 gradual prices to walk this thing up.

17 I want to dig a little into the first few days of
18 this rigged trading in Cubed stock, April 22nd through 25th.

19 Here's the exhibit. The first day. If you take a
20 look at what the volume was, David Ben-Bassat sold 17,320.
21 Take a look at the entire. He had all the volume of a hundred
22 shares. Selling at price and it closed at 520. An increase
23 of 20 cents in the first day.

24 Now what does Marc Wexler write to Kyleen Cane the
25 next day: Good morning, Kyleen the next morning. Before

SUMMATION - MR. HEIN

3555

1 opening of the market.

2 He says: Good morning, Kylene. Great day
3 yesterday. We had every share pegged. Trading looks great.

4 What does he mean by "every share pegged?" He means
5 that, hey, Marc Wexler, AJ Discala, the co-conspirators,
6 bought up and pegged every share that she's selling out. And
7 that's what they want, the closer you can match the buys and
8 sells, the more control you have and you can walk it up. And
9 he's telling her: We had ever share pegged. In other words,
10 we're buying all that stock you're selling, just as we're
11 planning to do, it's working.

12 And she just takes it in stride. She talks about:
13 I'm in Hawaii, I'll talk to you when I return.

14 She's not writing, what are you talking about? What
15 do you mean, every share? What's going on? No. She knows
16 exactly what he's talking about because she's in the scheme
17 with him. Every share pegged good. I'm selling and you guys
18 are buying. Co-conspirators carrying this out. Government
19 Exhibit 129-30.

20 And here's the account, April 22nd, 17,320 shares at
21 \$5.13. And April 23rd, 20,550 shares at \$5.25. The price is
22 going up. That volume represents essentially the entire
23 volume of the stock that's being sold. Again, she's selling
24 the market just as the system was planned. And here you see
25 all the hundred shares and the price rises again to \$5.25 on

SUMMATION - MR. HEIN

3556

1 April 23rd.

2 Now this in the evening on April 23rd, Wexler: You
3 think we can take -- you think we can take up -- take it up to
4 at least 530 tomorrow?

5 This is the manipulation. This is the intent on
6 both of these parties. This is the proof of knowledge. These
7 things, when we go through here, when you're looking at these,
8 he's saying, hey, Kyleen can we take it up to 530? Because
9 they're walking the price up.

10 Wexler knows exactly what's going on. And Kyleen
11 Cane knows exactly what's going on. How do you know that?
12 What does she write that evening? She writes to David
13 Ben-Bassat: Here's George number, George Castillo at
14 Glendale. And she's tells him: CRPT, Cubed, between 535 and
15 530.

16 She's following through on exactly what Marc Wexler,
17 her co-conspirator, is saying. Can we take it to 530? And
18 she's writes David Ben-Bassat, who is concealing her trades,
19 and saying: Here's your instruction. You call George at that
20 number, George Castillo, and you tell him he should buy at
21 that amount to walk it up to 530. That's your conspiracy.
22 That's your securities fraud. That's your wire fraud.

23 What does David Ben-Bassat write to her once he's
24 done this the next morning. He writes: I'm done with George.
25 I feel like I should have a reality show on HBO called, The

SUMMATION - MR. HEIN

3557

1 Idiot Who Knew How to Trade Stocks. And she writes back: You
2 should be on Shark Tank. And he says: More like Carp Tank
3 and as he explained, he meant Crap Tank.

4 Why? Because he told, I'm an idiot when it comes to
5 stocks. I have no idea what I'm doing. I'm just following
6 her instruction. She's a close family friend of mine. That's
7 why he is going forward with this.

8 And there's the trade placed at 5.291. Exactly what
9 Marc Wexler intended and asked Kyleen Cane to do, and exactly
10 what she instructed to happen. That's your rigged trading,
11 right there.

12 What do you see on this? This is 180-2. This is a
13 call that David Ben-Bassat had on these days. You can see
14 here with Glendale and with Kyleen Cane's home and office.
15 And he's corroborating. He's showing his support. David
16 Ben-Bassat: What's going on here?

17 On April 22nd, he's got these calls to Van Nuys,
18 California, the 800 number, that's Glendale Securities.
19 That's calling in the trades. Las Vegas, Nevada, that's
20 Kyleen Cane number.

21 He getting calls from Kyleen Cane. She's
22 instructing him to do stuff. He's passing it on to Glendale.
23 And here he's following up with Kyleen Cane.

24 You see the same thing these other dates.
25 April 23rd. Calling Glendale. Placing the trades. And then

SUMMATION - MR. HEIN

3558

1 April 24th. This the one we just looked at. On the night of
2 April 23rd Wexler said: Let's take it to 530. She texts
3 Ben-Bassat late that night, that evening, and she says: 525
4 to 530, here's George's number. And the morning of
5 April 24th, he calls George, just like he texted her and
6 placed that trade for him.

7 What did Ben-Bassat say when we asked him about his
8 role in this? We asked him: Sir, I'd like to ask you about
9 this Glendale brokerage account we talked about this morning
10 and now this afternoon. Do you feel you were mislead? He
11 says, Yes.

12 We asked: Would you ever open a brokerage account
13 for Kyleen Cane or anyone else in your name that's not going
14 to be used by you? Not in a million year.

15 Do you remember I said: Did you do any trading in
16 Cubed in your Glendale account? No.

17 Who, if anyone, gave you instructions for any trades
18 you made in the Glendale stock? Kyleen.

19 Did you receive any profits from the Glendale
20 account? Not a penny.

21 This is the long time friend of Kyleen Cane, who
22 said he was like family, together with her mom for a long
23 time. Here he's telling what happened in his Glendale
24 account, and the fact that Kyleen Cane controlled it.

25 Let's talk about a little bit about the escrow

SUMMATION - MR. HEIN

3559

1 account.

2 On May 3rd, Marc Wexler writes to Kyleen Cane,
3 Government Exhibit 129-38: We'll be in really good shape if
4 you think we can get to a point of even a small distro,
5 distribution, in the next 60 days or so. I know we need
6 execution, but if we are able we'll be able to go back to
7 everyone easily. And she says: Agreed.

8 That's agreement on the conspiracy. Here's the
9 escrow account. They've been selling now for about ten days.
10 He's been buying. She's been making money out of it from the
11 Ben-Bassat account.

12 And now part of their conspiracy is to dribble out
13 some distribution to the co-conspirators, because remember,
14 unlike the co-conspirators in CodeSmart who got the stock
15 certificates, Marc Wexler and other co-conspirators didn't get
16 them. They're getting their money through Kyleen Cane.

17 (Continued on next page.)

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SUMMATION - MR. HEIN

3560

1 MR. HEIN: They're getting their money through
2 distributions from the escrow account. That's how this
3 portion of the conspiracy works. Matt Bell told you his
4 understanding of the purpose of the escrow account. He says,
5 The purposes I was told was to hold freely-tradable shares
6 going to be sold at a profit and split among coconspirators.

7 We asked Mr. Bell, is it normal to have one person
8 controlling all the free-trading shares in the company. He
9 said no, because if you control all the free-trading shares,
10 you control the stock price as well. Absolutely. And who
11 controlled the escrow account containing all of these
12 free-trading shares for Cubed? Discala, Ms. Cane.

13 Now, during this first week of May, 2014, while Cane
14 continued to regularly sell Cubed and Discala and Wexler and
15 other coconspirators oversaw the buy side of these trades with
16 other coconspirators, they also were working with Darren
17 Goodrich and BMAC. And Darren Goodrich, and you will see him
18 on some calls, you've heard about him, he was interacting with
19 Discala, longtime friend, wanted to get in touch with Cane
20 because he was going to be another corrupt broker to help them
21 spread to get more investors, to spread the word on this to
22 help this stock manipulation scheme continue to rise with new
23 investors, and he was at BMAC. Here's a call on May 5th
24 between Discala and Goodrich.

25 (Audio played.)

SUMMATION - MR. HEIN

3561

1 MR. HEIN: So this call, Government Exhibit 198-3,
2 this is Overt Act D. In other words, it's another act in
3 furtherance of the conspiracy, because what Discala is doing
4 here with Goodrich is exactly -- he's asking him, as a
5 market-maker, as his corrupt broker, to rig the bids here.
6 He's trying to close the spread, which we talked to you about
7 before, and he's saying it's 4 51 and the price is at 5 26.
8 It messes up the optics, right? We need to make this look
9 like a real company to investors. We gotta (sic) close that,
10 and he's saying that about the 4 51. When he's jumping on the
11 call initially with Goodrich, he's saying to somebody, Get
12 Craig on the phone right away. Yeah, right away. Who's that?
13 That's Craig Josephberg at Halcyon, his other corrupt broker.

14 You see that with several of these calls. He's
15 always on the phone with other corrupt brokers to get them to
16 close the box to keep the spread tighter, to make this look
17 like an attractive company to investors, artificially. This,
18 of course, is Cubed stock price we're talking about here.

19 Now, May 6th, let's listen to another call. This
20 one is between Discala and a guy named Paul Turino -- John
21 Turino.

22 (Audio played.)

23 MR. HEIN: This is what Discala thinks of Cubed, and
24 this is what he thought of CodeSmart. He doesn't care at all
25 about the company. He's not in it to protect the company,

SUMMATION - MR. HEIN

3562

1 he's not in it to help the company. He's in it for himself.
2 He's in it to make money for him and his coconspirators. He
3 goes, We're out before the effing company will even see if
4 Cube works. He doesn't even care whether this Cube ever
5 works. Again, none of this is based on the merits of a
6 company or the prospects of the company, it's based on a
7 manipulation scheme, and this is what he thinks of it. And
8 Kyleen A. Cane doesn't care about Cubed either. She cares
9 about extracting profits from this just as Discala does, and
10 that's exactly what she does as well.

11 Here's another call 198-5.

12 (Audio played.)

13 MR. HEIN: This is on May 6th. He's talking to
14 another individual, Paul Lane, and he's saying, I have a funny
15 feeling Cube stock prices is going to be double digits very
16 soon.

17 This is not normal market conditions. This is a man
18 who is involved in a conspiracy to walk the price up with
19 Kyleen Cane talking about where he thinks he can get this
20 price so he can make profits. Double digits very soon.

21 Normal market conditions, one individual doesn't
22 know where a stock price is going, let alone where it's going
23 to be at, and that's where he thinks he can get it, through
24 his manipulation scheme.

25 So around the same period, Discala is talking to

SUMMATION - MR. HEIN

3563

1 Darren Goodrich at BMAC, he's talking about Kyleen Cane's
2 escrow, he's talking about what Cane would pay Goodrich for
3 his role in the conspiracy. I will play this next call here
4 in a second. This came up yesterday in Discala's testimony
5 regarding the 25 at 25, 50 at 25, and it's what Cane and
6 Discala are discussing paying their brokers, their corrupt
7 brokers, in free-trading shares at pennies on the dollars for
8 their participation in helping this scheme along.

9 Here's the call, May 9th, a few days later. This is
10 Count 5, Government Exhibit 198-6. This is another wire fraud
11 count. Another wire, another call in furtherance of the
12 fraudulent scheme to manipulate Cubed.

13 (Audio played.)

14 MR. HEIN: So this covered -- this call covers a lot
15 of important issues to this manipulation scheme.

16 First point is here when they are speaking, this is
17 Darren Goodrich, and Goodrich is saying, I'll call her in an
18 hour. And of course he says she doesn't want to talk about
19 it, you should meet her in person. And Discala says, I think
20 she just DWAC it because I don't even have it, you know what I
21 mean? It's all in escrow.

22 And what he's saying is, he doesn't even have these
23 shares. All of these free-trading shares are in escrow with
24 Kyleen Cane. And Goodrich doesn't quite understand the
25 escrow, and that's why he wants to sit down with her, because

SUMMATION - MR. HEIN

3564

1 if he's joining the scheme as a corrupt broker, he wants
2 assure that he gets his profit out of this as well. That's
3 why he mentions, I'll talk to her. And what does Discala say?
4 He says what -- what he's been saying throughout is, She
5 doesn't even like to talk about the escrow. Now, why doesn't
6 she like to talk about it? Because it's an illegal scheme to
7 control the stock. She doesn't want to disclose that.

8 And, again, as you've seen here and as we go through
9 the rest of the calls, Kyleen Cane is cool, calm, calculated,
10 experienced in this stuff. She's not -- she says, I don't
11 want to talk about this stuff.

12 You know, Discala had thousands and thousands of
13 texts with Bell on a daily basis regarding their manipulation.
14 Kyleen Cane, she wants to keep it under the radar, and so she
15 doesn't even want to talk about it. And then Discala tells
16 him what his understanding of the escrow is. He says there
17 are five escrows, and he mentions there's no stock in the 2
18 67, and what he's referring to are those tranches of 2 67 --
19 267,000 shares I showed you, those fake shareholders, when you
20 go through that chart and you see those and he understands
21 they're five, but now there are actually 30 of them, but he
22 understands there are five of those, and that there's 267,000
23 shares she's releasing in the market like she wants, just as
24 she did with the David Ben-Bassat shares.

25 What else does he mention? He mentioned to him

SUMMATION - MR. HEIN

3565

1 being part of the team. You go talk to her and you'll be part
2 of the team. This is the team; this is the conspiracy. These
3 are the individuals carrying out this fraud, and you see that
4 in the call as well.

5 And then there's the discussion of the payment to
6 the corrupt brokers, and he talks here in the bottom right
7 about 25 -- excuse me. It's on the top right -- but about
8 what they pay, 25,000.25, and that's what he's talking
9 about -- Goodrich about, when Cane pays and what they'll pay
10 Goodrich to participate to get all these free-trading shares
11 as a reward for their work, keeping the spreads tight,
12 bringing investors, and doing their bidding as part of the
13 scheme. This stock's trading at about \$6 now and they're
14 getting these shares for \$0.25 on the dollar. That's what
15 they're discussing doing, and he talks about how Cane likes to
16 do it and how much he normally pays her brokers, because she's
17 experienced. He's saying she's done this before, and you see
18 that on the bottom right when he talks about how experienced
19 she is, and he says, It'd be well worth your while to meet
20 with her. I mean, she's done them all. She did 25 Berry
21 deals, you know. She's the one we want on our side from the
22 structure on the APO side.

23 Now, APO, you learned from Matt Bell and other
24 witnesses, stood for alternative public offering. That's one
25 of Discala's terms for an alternative to an initial public

SUMMATION - MR. HEIN

3566

1 offering, the way companies typically go public, which require
2 more SEC filings, more expenses. Then there's the alternative
3 public offering, the reverse mergers of the shell. He says,
4 That's who we want, Kyleen Cane, on our side for the
5 alternative public offering because she's done a lot of them.
6 She sells -- she sells shells, and, as he's saying -- as
7 Discala's saying, she's experienced in dealing with brokers
8 who are working in her conspiracies and paying them off, just
9 as he says here, at these shares for almost nothing compared
10 to where it's trading.

11 And this is Count Five, another wire fraud count in
12 the indictment. This is in furtherance of the fraudulent
13 scheme to manipulate CodeSmart. And I just mentioned the five
14 escrows, 2 67 each. Now, as I said, there are 30 of them, but
15 here you see, look at that middle column, David Ben-Bassat,
16 267,000 shares. He's referring to that as an escrow. Marche
17 Godffrey, 267,000 shares. Another escrow, Marcus Poe. These
18 are what he's saying she has and that she decides when she
19 wants to release them in the market to carry out the scheme,
20 because she's got the control over it.

21 I'm going to go through some of their continued
22 coordinated trading of Cubed shares that went on in May.

23 I will play this call, it's between Discala and
24 Azrak, Exhibit 198-74, this is Count Seven, another wire fraud
25 count in the indictment.

SUMMATION - MR. HEIN

3567

1 (Audio played.)

2 MR. HEIN: Now, this Count Seven, 198-74, this is
3 Discala's role in this Cubed portion of the conspiracy.
4 Cane's role is on the selling side, she's issuing, she's
5 selling out the shares, and Discala's role is to buy into them
6 with the coconspirators to walk that price up and then also to
7 handle what he calls optics. He always refers to optics. He
8 wants to see how that box looks. He wants to make sure that
9 the spread is not big between the bid and the ask because he
10 wants to make it look like a healthy company, which it's not,
11 it's got nothing to it, but that's what he's trying to do.

12 And this, Not held good to cancel. Good to cancel
13 means that bid that he's asking Azrak to put in is going to
14 stay there until he cancels it because he wants to hold that
15 floor. He doesn't want the price to fall below there because
16 he's walking it up.

17 And Azrak even says, Am I providing support?

18 And he says, No, it's not support. It's optics.

19 In other words, I don't want you to get hit. I
20 don't want them to sell into you. I just want you to keep
21 that floor and make it look like the price should be going up.

22 And he says, They're at five bucks. I want them at
23 5 25. I'm at 5 30, 5 30, 5 31, 5 30, 5 30, 5 25.

24 That's the floor he's setting. If he puts in all
25 those bids, price is only going to go up, not going to eat

SUMMATION - MR. HEIN

3568

1 through those, the price is not going to go down, and that's
2 what he's doing with Azrak, manipulation, rigging of the
3 stock.

4 That's Count Seven, another wire fraud count.

5 Here's Count Six, another wire fraud count from
6 May 9th. This is Discala and Sloan.

7 (Audio played.)

8 MR. HEIN: Also, another wire, another telephone
9 call in furtherance of the fraudulent scheme. He's calling
10 Jamie Sloan telling her to buy 'cause that's his end of this
11 rigged trading. Kyleen Cane is to sell, he to buy. Of
12 course, who is he buying it through? My father, right?
13 Another -- they call it nominee. Another individual is in
14 your name, but you're doing it through them. It's other stock
15 you control, like Goepel was for CodeSmart. And he's walking
16 the price up this way, and, again he's -- he's -- they're
17 discussing VFIN, another market-maker. That's another point
18 that Sloan raised with you. There are different market-makers
19 that you see on this level two screen; VFIN, BMAC, CEL. He
20 mentioned a few of them. And what'd they want? They want to
21 make sure that spread is tight for all of them. So what Sloan
22 described to you, he would call in and say, Do VFIN now, do --
23 because he's looking at that box and he wants the optics to
24 look just right to misrepresent to the investing public what
25 this stock is actually worth and how it's traded.

SUMMATION - MR. HEIN

3569

1 This is Dave Ben-Bassat's account statement. These
2 are the shares that Kyleen Cane is selling during this period,
3 April 28th through May 9th. We just listened to calls from
4 that period, we saw what Discala is doing on the buy side,
5 what he's doing on the optics, and she is selling. She is
6 selling these shares as part of the conspiracy to work the
7 price up, and you see that here.

8 Now, around this same time, May, also in April,
9 Discala and Cane are out there with their, what they call,
10 IRPR -- investor relations/public relations. These are the
11 people who are supposed to get the name of the stock out there
12 to try to build an investor base that they can deceive into
13 this, to bring in victims who will buy into this, help them
14 work the price up who they can profit from.

15 This next call is a call in which Discala discusses
16 his deception of investors.

17 (Audio played.)

18 MR. HEIN: So this is Overt Act E, another act in
19 furtherance of the securities fraud conspiracy in furtherance
20 of the objective of it, which is to milk investors for profits
21 for these fraudsters. May 12th, 2014, it's Government
22 Exhibit 198-13 that we're looking at, and this first portion
23 is talking about Jobo, who is Craig Josephberg, and he's
24 talking to Azrak about it, and he's talking about, hey,
25 let's -- let's -- what he refers to as shtup investors. In

SUMMATION - MR. HEIN

3570

1 other words, screw them over, to stick them in here, to have
2 Jobo stuff their accounts with stock -- Josephberg -- and
3 let's see what happens to it. If it goes up, they can keep
4 it. If it doesn't, leave them with it so they lose the money.
5 And Discala says, So, by the way, you're not getting it.

6 That's what Josephberg does. That's what he's been
7 doing. That's what Josephberg's been doing forever.

8 Let's listen to the next part of the call.

9 (Audio played.)

10 MR. HEIN: Now, when Discala testified yesterday, he
11 testified to you this was a joke; that this was funny. This
12 isn't funny. This is what they did to investors. It's not
13 funny to investors. It's not funny to the victims you heard
14 from on that stand who lost tens of thousands, if not more,
15 money that they invested, that they didn't know that Discala's
16 coconspirators, including Kyleen Cane, were carrying out this
17 artificial manipulation.

18 What Discala's talking about here, he's saying, No,
19 no, let's not just do this on the short side with one investor
20 and screw him over, no. You gotta take the long road, you
21 bring 'em in, milk them of their money, walk that price up,
22 and then you take all their money, and that's what he's
23 talking about.

24 Victor Azrak testified, he said, The calves in this
25 story are the unsuspecting investors, investors who don't know

SUMMATION - MR. HEIN

3571

1 what's going on, and that's what Discala thinks of them.

2 Let's go to the next call. It's May 20th,
3 Government Exhibit 198-20, it's between Discala and Goodrich
4 about BMAC.

5 (Audio played.)

6 MR. HEIN: So what you are hearing here on May 20th
7 is Discala talking to Goodrich and Goodrich had now, as he had
8 planned to do, met with Kyleen Cane and talked to her about
9 the escrow, and he said, Hearing it out of her mouth, it makes
10 complete sense.

11 He tells Discala that he described it perfectly.

12 When he mentioned the five escrows, the 267,000 in each one,
13 he got confirmation from Kyleen Cane when he met with her,
14 that's exactly how this conspiracy is going to work, and
15 that's how she explained the escrow.

16 Let's listen to the second portion.

17 (Audio played.)

18 MR. HEIN: So what are Discala and Goodrich talking
19 in the second portion of this call about? They're talking
20 about Kyleen Cane through her -- what I submit is her IRPR,
21 investor relations/public relations.

22 Hopefully Kyleen will be doing her job soon. I'm
23 sure she explained to you that she's going to get some people
24 covered.

25 And Goodrich says, Yeah, she did. Really good.

SUMMATION - MR. HEIN

3572

1 Those are the people, the promotional people, the
2 people with news release, the people promoting the stock.

3 And Discala says, And then also when I got -- when
4 we get to my horses, if I get some hay, my horses will eat
5 too.

6 And actually, I think if you listen closely to the
7 call, you'll see he says, And also when I got -- when we
8 get -- and he says -- mentions some news. And then he says,
9 My horses, if I get some hay, my horses will eat too.

10 Hay for the horses. Hay is news. It's press
11 releases. And his horses? His horses are his promoters, his
12 brokers, his buyers. If he can get some news, good news about
13 Cubed, just like with CodeSmart, he can feed it to them so
14 they can start bringing it in on unsuspecting investors,
15 victims, and tell them this is a good stock, look at this
16 news, great stock, you should invest and we'll take your money
17 from you.

18 And as Goodrich confirms, Kyleen Cane told him she's
19 getting some people in, yeah she's moving odds, and as we see
20 it and we go through it, she, in fact, does get news releases
21 out; she, in fact, does provide that part of the conspiracy.

22 Now, later that day, Discala has a call with Victor
23 Azrak. And by the way, this is Overt Act G, another Overt Act
24 in furtherance of the securities fraud conspiracy. This is
25 Over Act H, 198-21.

1 (Audio played.)

2 MR. HEIN: Again, when Discala testified, he said
3 this was a joke. And, once again, it's not a funny joke.
4 It's not a funny joke to the victims, to the investors that
5 were brought into the scheme.

6 Now, you heard from Special Agent Voulgaris that the
7 FBI began wiretapping Discala's calls with Kylene Cane on
8 May 21st, 2014. I will play the first call that we have here
9 now and you will hear them discussing the specifics of this
10 fraudulent scheme in which they are both participating. You
11 will hear them discussing promoting Cubed stock to investors,
12 controlling the stock price, and paying their corrupt
13 broker-dealers for aiding the manipulation.

This is Overt Act I, Government Exhibit 198-23.

15 (Audio played.)

16 MR. HEIN: So this first portion of the call here,
17 Discala's talking initially here about, Heard you had a great
18 meeting with Darren, which Darren Goodrich said he did with
19 Kylene Cane, one of the calls you heard, good talk with Marc,
20 Marc Wexler. These are all their coconspirators that they're
21 talking about. They are on the same page here as to what
22 they're doing.

23 And Cane tells him, I had a great call with my IRPR
24 people -- investor relations/public relations -- people that
25 she's enlisting to promote this stock as part of their scheme.

SUMMATION - MR. HEIN

3574

1 He says, Great.

2 She also mentions two people who are going to bring
3 in half a million dollars, some interim money. She's also
4 bringing money in to really allow this scheme to take off.
5 And then they both talk about a team. He says, I don't need
6 credit. We're part of this team.

7 And then she says at the end there: I will just
8 tell them, you know, it's part of the team.

9 This is the conspiracy. They are the team. They
10 have agreed to this. They are working together. They're on
11 the same page.

12 So let's listen to the rest of the call.

13 (Audio played.)

14 MR. HEIN: This call demonstrates that Kyleen Cane
15 and AJ Discala are exactly on the same page as to this
16 conspiracy.

17 Discala says, Have George, George Castillo, your
18 corrupt broker at Glendale, then David Ben-Bassat, says, in
19 counter, You're selling shares, call George. Just go 5 4 2.
20 Have him go to 5 4 2, not 5 40.

21 Again it's the optics that AJ Discala is always
22 worried about. He wants instead of 5 40 -- \$5.40, he wants
23 \$5.42.

24 And then they go back and forth, and he says, 5 4 1
25 is fine. 5 4 1 is fine.

SUMMATION - MR. HEIN

3575

1 She says, Okay. All right. I'll ask him to move it
2 up a little.

3 She doesn't say, What are you talking about? Why
4 would you want me to alter any prices or any spreads or
5 anything with George Castillo? They're just discussing at
6 what price to do it at. That's rigging of market activity.
7 That's illegal. That's artificially affecting the market, and
8 that's exactly what she and Discala are discussing here, and
9 they're on the same page. They're just talking about what
10 price looks better from an optics standpoint.

11 Then if you look at the last portion of the call
12 here, they're talking about what to pay the corrupt brokers,
13 and Discala says, Goodrich is really helpful. You should pay
14 him 50,000 shares at \$0.25 a share at almost nothing when the
15 stock's trading at \$6.

16 And she says, 50 at 25? We were doing 25 at 25 with
17 Glendale.

18 And you'll see that later that she, in fact, makes
19 that payment to Glendale. They're on the same page. She's
20 saying, What should we pay our corrupt brokers for their role
21 in this scheme? And she's saying, Well, I'm paying 25,000
22 shares at \$0.25 a share, that's what I'm selling those shares
23 to, to the corrupt broker here, and I don't know about 50 at
24 25.

25 And he said, No, no. Darren will be really helpful.

SUMMATION - MR. HEIN

3576

1 He'll help this scheme really take off.

2 And she says, Okay. All right. I'll work with him.

3 There's full understanding of what's going on
4 between them, and they are working on how best to make this
5 manipulation scheme work.

6 That's Overt Act I.

7 And during this whole period in May, what's
8 happening? Kyleen Cane continues to sell out at David
9 Ben-Bassat's -- her account under David Ben-Bassat's name at
10 gradually increasing prices, just as you saw on the chart.
11 May 12th: 5 35, 5 35, 5 37, 5 40, 5 42. She's selling at
12 ascending prices, and the buys are at ascending prices to work
13 the stock up, just like happened with CodeSmart, and that's
14 what she's doing here in her role.

15 May 23rd, 2014, spiking Cubed's stock price. We've
16 discussed this before; it's come up with several witnesses.
17 And what you have seen and heard from the evidence is that
18 there was an unsuspected spike in Cubed's stock on May 23rd,
19 it had been going gradual, and it catches Kyleen Cane and AJ
20 Discala off guard. And as you'll see in the calls and
21 documents that we've gone over, it came about because their
22 corrupt brokers working with them weren't at the desks
23 carrying out the objectives of the conspiracy. George
24 Castillo was on vacation, Darren Goodrich wasn't at his desk.

25 And so what did they do? They talk about rigging

SUMMATION - MR. HEIN

3577

1 the price. Hey, let's get it down a little bit because it
2 looks bad, it hurts our gradual increase of the price of the
3 conspiracy if it spikes up like this. And why does it hurt
4 it? Regulators might notice, you heard Bell testify to that,
5 and we'll go through that a little bit, and then you'll see
6 Kyleen Cane later talks about profit-takers. It's going to
7 hurt your conspiracy. If your spike -- if your price spikes
8 to that degree, people who own that stock might quickly sell
9 out instead of holding it and enabling you to work your price
10 up.

11 And so they continue to rig the price, they continue
12 to bring it down, they bring it down for purposes of -- to be
13 able to continue to increase it as part of their conspiracy.

14 Here is the spike I'm talking about. It's in the
15 middle of this chart, 196-12. You saw it. It gradually was
16 increasing, the price, and then all of a sudden that day,
17 surprisingly it pops up. It pops up above \$7, they bring it
18 back to 6 30, and then it continues to gradually go up from
19 there.

20 Here's a call that Discala and Cane had on that day
21 when they noticed a spike. It's Government Exhibit 198-28.

22 (Audio played.)

23 MR. HEIN: Right here, they're caught off guard by
24 the spike in the price. What's telling about this call?
25 First of all, Kyleen Cane is in control.

SUMMATION - MR. HEIN

3578

1 Discala says to her, Just tell me what you want to
2 do, and what would you like me to do here?

3 'Cause he knows that she's the one in control of the
4 escrow, she's the one in control of the shares, she's selling
5 them out.

6 And he says, How should we fix this? What would you
7 like me to do?

8 And they talk about George Castillo's on vacation.

9 Discala says, I talked to John, Darren's assistant,
10 because Darren Goodrich is on vacation -- and there's
11 confusion about how this happened. She's following the stock
12 price at seven and she's saying, It jumped there.

13 Because this is not following precisely the
14 conspiracy scheme they put together because the people they're
15 relying on as part of their conspiracy are out that day.

16 Discala says, This is my box, meaning the box he's
17 looking at in terms of the price and what to do with it.

18 And she says, I'm going to call George right now.
19 I'm going to call George Castillo and figure out what
20 happened, to figure out what's the cause of this.

21 Here's the remainder of the call that they were on.

22 (Continued on following page.)

23

24

25

SUMMATION - MR. HEIN

3579

1 MR. HEIN: Kylene Cane says we need to keep it back
2 down, we need to keep it back down. She says, I need to
3 figure out what the F is going on here. Because she knows
4 that this is hurting their manipulation scheme. She's not
5 bringing the price down of wanting it to come back down for
6 protection of the company. She wants it down for the
7 protection of them, of their scheme, so they can carry this
8 thing out. That's why she's calling George. She needs to see
9 where do we get this price at to keep this thing going. She's
10 artificially rigging a market. This is not what happens in
11 normal market conditions with a stock. You don't have
12 individuals who have this control. You're not permitted to
13 execute this type of control over a stock to rig it. That's
14 what they are doing now.

15 They are trying to figure out what George is going
16 to say and what they can do. Why do they want to keep it
17 down? I submit to you two reasons. The first is, it looks
18 bad to regulators. You pop in a stock like this, a penny
19 stock like this, and it jumps to \$5.07 that gets on people's
20 radar screen. Matt Bell testified to that.

21 You see in the text message later we go through from
22 Kylene Cane, profit takers. It hurts the scheme because now
23 people might want to get out. People who bought the stock
24 might say I'm going to sell and get out. It hurt the scheme,
25 that's why they want to drive it back down.

SUMMATION - MR. HEIN

3580

1 Here's what Matt Bell told you about a similar
2 scenario with Code Smart. The stock jumped from \$4 to \$6 he
3 testified to this on the first day of his testimony early on.
4 He and AJ Discala said, oh, no, what is going on. We need to
5 get that trade fixed. We asked him why would that create a
6 big problem. He said, if your stock trades at \$4 and filles
7 at \$4 and then to \$6, big jump, I have a 50 percent spike in
8 the stock and I've got regulators, people whose job it is to
9 crazy things to happen in the market. And so if any of my
10 stocks spike up ten to 20 percent in a morning, my management
11 team will get a report and then they are supposed to
12 investigate. So we don't want that to happen. Why we don't
13 want anyone to know what we're doing.

14 I submit to you that's a big part of the concern
15 that Kyleen Cane and Discala had about the spike in the stock.
16 After the call on May 23, she texts Marc Wexler and George
17 Castillo, 129-43, about this issue. She says, yes, everyone
18 is out on vacation it's what happens when no one is mining the
19 store. George Castillo is not minding the store. She says
20 they, she then writes George Castillo, call when you can.
21 Sorry to disturb you. She wants to get this sorted out with
22 him, so he takes the right step to get it back on track. She
23 writes back to Wexler about the price, not bad but not great.
24 Need to understand what happened first. Haven't been able to
25 reach anybody. Wexler writes, understood. Not sure either we

SUMMATION - MR. HEIN

3581

1 put up some bids just to protect it, until we get marching
2 orders. She says, hopefully I'll get a call back soon from
3 George Castillo. He says, okay, of course. Hoping we don't
4 have to go down too fast. It's your call. We're with you.

5 Again, co-conspirators, what they are saying we
6 would put bids just to protect it until we get your marching
7 orders. That's not permitted. You can't put bids in to
8 protect a stock price. That's artificial coordination,
9 artificial control over a price. That's rigging the price to
10 mislead investors.

11 She understands that. She said I'll get back to you
12 soon let me talk to George Castillo. She needs the control.
13 He says, it's your call. She writes both Wexler and Discala
14 same day, it's coming back part way. It's coming back part
15 way.

16 This is fraudulent intent. This is, hey, we're
17 rigging this price back, we're getting it back to a spot where
18 we want it. It's not permitted under the law.

19 Now, Cane and Discala, these text messages, they
20 follow up on what is going on, 198-29.

21 (Audio played.)

22 She explains what George Castillo is going to do,
23 he's going to get it back down to the sixes, she says, so it
24 just doesn't jump so much. She's controlling the price. She
25 doesn't want it to jump so much right back in the right place

SUMMATION - MR. HEIN

3582

1 to continue the inflation of the price.

2 (Audio played.)

3 Kyleen Cane says to Discala here, it's going to be
4 yeah it's going to be sixes, it's still going to be 50 to 60
5 cents, whatever it is, so, and everybody is going to be happy.

6 Again, artificial rigging, manipulation of price.

7 Then she asks Discala, where do you want it to land?
8 Where do you want it to land? That's crystal clear. It's
9 saying we're manipulating the stock price you tell me where
10 you want it to land. I'll talk to George Castillo and we'll
11 get that price there. He says 6.35 because people would get
12 too excited, they would get too disappointed if it went up. She
13 says, all right, all right. I'll tell him.

14 This is a meeting of the minds, a discussion among
15 co-conspirators about where this price should land, what looks
16 best, optics, so we can keep this scheme going.

17 Then Discala, he informed Goodrich of what is
18 happening on the same day, 198-30.

19 (Audio played.)

20 Discala is informing Goodrich of what is going on.
21 They are going to retweak it to 6.35. And wants to make sure
22 it never happens again. He mentions to him what the price is
23 around 6.2. He's asking Goodrich to help with the box again
24 for optics purposes. He tells him, I'm going to talk to
25 Kyleen and make sure we get you the 50,000 shares for 25 cents

SUMMATION - MR. HEIN

3583

1 a share.

2 Kyleen Cane, the same day, she writes George
3 Castillo, have a nice weekend, sorry to bother you. She's in
4 touch with him to make sure they get the price back down to a
5 spot where they want it.

6 Here Discala, 198-31, he informs Azrak of what is
7 going on.

8 (Audio played.)

9 So Discala is informing Azrak of what happened and
10 how they are going to fix it. He said, I can't have that.
11 I've got news coming Tuesday. It will jump, it will go. So
12 what he's saying is we're going to get it back down, but don't
13 worry next Tuesday I'll get news and get this price going up
14 again as part of our scheme.

15 Then look what he says to him about what happened.
16 It was a mistake, right, George or Glend let's call him Jotta.
17 Discala doesn't want to use his real name, a nickname, why,
18 because he's a corrupt broker. He's a part of scheme so let's
19 give him a nickname to conceal the fact that George is from
20 Glendale. Let's call him Jotta as part of this.

21 He says he was on a plane, right, it got hit. It
22 went through him. BMAC got hit. I had to lift the left side.
23 Then Jotta landed, talk to Kyleen, we don't want this. We
24 wanted 6.35 today, 6.30, something like that, then we'll let
25 news rip it up next week. That's the news, again, get it back

SUMMATION - MR. HEIN

3584

1 up. He says to Azrak 6.30, 6.35 something like that. He
2 doesn't care whether it's 6.30 or 6.35, he wants it in that
3 vicinity. That's where he wants the price. That's what
4 Kyleen Cane and him discussed about getting there, and then
5 let's rip news right after that and get the stock price back.

6 Wexler writes Kyleen Cane that day. I know. Back
7 down. I hope it stops somewhere soon getting tremendous calls
8 and texts. Maybe now with some news we'll have some real
9 holders.

10 What does he mean by that, hey, if you get us press
11 releases, news out there, promotion, we'll get some real
12 holders. That's important to this scheme, eventually get some
13 people who want to stick with the stock, people
14 non-conspirators, holders to stick with the stock and allow us
15 to work this up and take their money. He needs press releases
16 to do so. Here, a call between Kyleen Cane and Discala later
17 that day.

18 (Audio played.)

19 These are the co-conspirators, Discala is on the
20 phone with Wexler. Hi, Kyleen. I'm on with Marc Wexler.
21 We're trying to talk about where to get the price. I don't
22 want on the five left side, I need it in the sixes, optics.
23 He says 5.36, everybody else is 620, 620, 615. She says,
24 okay, yeah I'll call him right now. Before she picks up he
25 says, you know can you go, can you go, can you go 6, can you

SUMMATION - MR. HEIN

3585

1 go 6.27 for 200, I'll go 6.28. That's Marc Wexler right at
2 the beginning. These are the co-conspirators discussing the
3 price and what to do with it. And she doesn't question. She
4 doesn't question about rigging prices. She's, like, okay,
5 I'll call them. Let's get this going.

6 Look at where we end up on May 23. She sells, look
7 at the David Ben-Bassat account, 3600 shares through George
8 Castillo for \$6.297, 6.30, that's what she says, that's just
9 as what she and Discala had discussed. He discussed 6.35 then
10 he said I'm looking 6.30, 6.35 somewhere in that realm, that's
11 where she landed. She's fulfilling her part of the conspiracy
12 here.

13 Now, more Tuesday. This is the text Kyleen Cane
14 responds to Wexler when he says maybe now with some news we'll
15 have some real holders. She says, I'll get you some news on
16 Tuesday, just as Discala had talked about as well. We just
17 need some news. Here is the closing price, popped over seven,
18 closing price of the stock \$6.30. Just where they had
19 discussed getting that stock at, to rig it back down to
20 continue their manipulation.

21 They continue their coordinated trades and their
22 manipulation after May 23, end of May into June. Here is a
23 call, Overt Act K, Discala and Cane have on May 27, 198-34.

24 (Audio played.)

25 They are talking about the dollar amount. You heard

SUMMATION - MR. HEIN

3586

1 from certain victims, you heard from certain investors they
2 were buying a dollar a share, restricted shares, but shares
3 that they thought were worth six times that and eventually
4 would be able to sell. They are discussing bringing more
5 investors in. Investors who think this is a good company, who
6 they promoted to and who gets swindled. Let's continue the
7 call.

8 (Audio played.)

9 So what they are talking about here, she mentions
10 press releases. She says I'm getting something out today.
11 This is 27th, Tuesday, 23rd was Friday, so 26th must have been
12 Memorial Day weekend. Here is the new trading day. She's
13 providing news. I'm getting my PR guys out there.

14 That's part of the scheme she would have provide the
15 news and then they would use that to get the stock price up.
16 Discala is talking about optics again. He's talking about
17 where to move the price and she understands exactly what he's
18 talking about.

19 On May 27 Wexler writes Kyleen Cane, Kyleen, can we
20 just ease into 6.35? We have some buying. She says okay. He
21 asks is everything still on track? She says, yes, call me.
22 No text. She's agreeing with him. I'll ease you into 6.35,
23 let's discuss this on the phone, no text. I don't want any
24 record of this.

25 Here on May 27, the Ben-Bassat account, sells at

SUMMATION - MR. HEIN

3587

1 6.325 above the 6.30, easing into 6.35 just as she agreed with
2 Wexler. After close on May 27 she calls David Ben-Bassat and
3 he puts a trade in with George Castillo and Glendale. Here is
4 that trading on the next day, May 28 at 6.41, working the
5 price up, using Ben-Bassat as a cover up. Communicating with
6 him and having him put the trades up and the price is going up
7 again. Got back 6.30, she puts it in, 6.32. May 28, 6.41
8 they are climbing again, just as they planned.

9 You saw on May 27 Cane put out press to help Discala
10 and their co-conspirators to promote the stock. This is a
11 important part of the scheme, just as Code Smart.

12 May 29, 2014, they also talk about putting news out
13 in furtherance of the conspiracy. Would you guys consider
14 letting me run press, I've done it before. Then he says, oh,
15 I just saw it. Wexler really wants the press out. He said it
16 on the stand, he testified to it, he wants it all to move
17 faster than Kyleen Cane, who knows the rhythm she wants to
18 move at, she knows how this will be a success. But then he
19 sees the price after he writes her. She writes, Kurt Divich,
20 the new PR guy, he delivers just before market opens. No need
21 to look two hours before. It was scheduled last time for this
22 time. All really good. She is saying, I got a new guy, he'll
23 get it just before market opens so you can work it to work the
24 price up that day. She's agreeing to, that's what she's
25 doing.

SUMMATION - MR. HEIN

3588

1 Here on May 29 continuing to sell, gradually
2 increase in prices. Also on May 29 Wexler writes to her, he's
3 wondering who is on the bid, can it be like MMS is trying to
4 break it down or short us? And seeing if they can break it.
5 She says profit taking, moved up too fast. This is why she
6 was concerned about that huge spike. We need it back down.
7 We need it back down, because she knows how these schemes
8 work. When you work that price up, you can't have people jump
9 in there and sell. They see this huge spike. That's why she
10 was concerned, that's why she wanted it back down.

11 June 3rd, Discala is on another call with Cane.
12 They continue to discuss rigging the price and rigging the
13 volume of the stock.

14 (Audio played.)

15 Crystal clear evidence of intent on both parties,
16 both of them are talking about rigging prices, rigging volume.
17 He's giving his view how the optics look and what is best.
18 Kyleen Cane is saying, well, actually the guys who promoted
19 asked to keep it at certain levels, not, not shoot it up.
20 We're moving it up pretty high. They are describing their
21 manipulation scheme, what it's doing to the stock price.
22 She's saying move it up a little higher, talking to the
23 promoters, other co-conspirators, they are saying we don't
24 want to shoot up.

25 (Audio played.)

SUMMATION - MR. HEIN

3589

1 Again, crystal clear what they are doing here. He's
2 talking about IRPR guys. He's saying I completely agree with
3 you, I just need to get my horses some hay. He needs to get
4 his horses some news, his promoters some news, to work the
5 price up. He asked about the news. She said, I got something
6 out today. I'm going to twice a week. That's exactly what
7 she's doing here, they are working together to work the price
8 up. That's June 3rd.

9 What else happens on June 3rd? This is 198-41 Cane
10 transfers \$300,000 in Cubed trading profits to her own account
11 from the Ben-Bassat account. This is the money that she's
12 extracting from the scheme. Here on the left you have it,
13 \$300,000 Ben-Bassat signs it June 3rd. On the right we asked
14 Ben-Bassat about the transfer. Did you wire 300,000 to
15 yourself, sir? No. Who was using this bank account that was
16 sent to? Kyleen Cane. Did you use any of these 3,000. No.
17 Did you know about this June 3rd wire before you met with the
18 Government. No, I did not.

19 Those are the proceeds that she has made from her
20 manipulation from her sale of the stock unbeknownst of
21 Ben-Bassat, she's transferring it over to her account. That's
22 intent. That's evidence of intent of her being part of this
23 scheme and profiting from it illegally.

24 June 7, four days later, you heard about Andy
25 McAlpine, a broker down in Cayman Islands. You saw text

SUMMATION - MR. HEIN

3590

1 messages between McAlpine and Kyleen Cane. What did he write
2 to her about Cubed stock, that stock is creeping up. She
3 gives him a smiley face. That's exactly right, that's what
4 I'm doing with the stock, creep it up to take advantage of it.
5 He says, you have a million shares, wasn't it. She says,
6 first deposit will be 270, but there will be two more, those
7 are the escrow accounts.

8 The first deposit of the Ben-Bassat shares to trade
9 at 267,000 but there will be two more she said. She's going
10 to work her way down the tranches of fake shareholders to put
11 them in, to sell, to drive the price up.

12 On June 12 Discala and Josephberg talk.

13 (Audio played.)

14 Government's Exhibit 198-51, who is control of the
15 scheme, Kyleen Cane because she controls the shares.
16 Josephberg, the corrupt broker, says call Kyleen Cane, she's
17 the person you need to talk to if you have questions about
18 this.

19 June 12, this is Count Ten, another wire fraud count
20 in furtherance of the conspiracy.

21 (Audio played.)

22 What is going on here with discussing Wexler's
23 conversation with Kyleen Cane. First of all, she's the one in
24 control. She's saying back off, I got this, I'm handling it.
25 When she said that, Discala says, that's beautiful. Why is

SUMMATION - MR. HEIN

3591

1 that beautiful? Because he trusts her. He knows that she has
2 experience and expertise in how to make this thing work.
3 Wexler is pushing hard. He wants more and more volume. She's
4 saying the company has got to catch up with the stock
5 price. Meaning, to make this thing work, you got to walk it
6 up. You can't just go spike it up, like Wexler wants and make
7 your money. You got to stay under the radar, stay under the
8 regulators, work the price up to continue to profit. And look
9 what she made all right, 300 grand she just extracted. She's
10 got a million restricted shares.

11 You get this conspiracy to go out for a year and
12 those restricted shares become freely tradeable. And you're
13 trading in the high, single digits or ten bucks, wherever you
14 get that thing to. You sell those for \$10 million, that's
15 certainly a lot more profit than the 300,000 she made so far.
16 She's saying, I got it, we're pushing forward. This is in
17 furtherance of the fraudulent scheme. She continues to be
18 pushing the sales.

19 June, here are the sales, increasing prices. 6.60,
20 6.63, 6.71, 6.70, 6.70. She's pushing up, as she said
21 earlier, I don't want it to jump too quickly. She's talking
22 to the promoters, you got to do this the right way, got to get
23 this thing going gradually to get the most out of this
24 manipulation scheme.

25 How else is she pushing forward? June 20, she

SUMMATION - MR. HEIN

3592

1 prepares the Marche Godffrey shares for sale. Marche Godffrey
2 you heard from him testifying before. No idea about the
3 shares. She controls them. Now she's getting that second
4 tranche ready for sale.

5 Here you see it. Marche Godffrey on 6/20 they go
6 into the Cede & Co. and then they go to JP Morgan Clearing
7 Services. She is getting the next tranche ready for sale to
8 continue to get the price up of Cubed, just as she told Andy
9 McAlpine in the texts, I got 270 already, two more in their
10 way, and here is one of them, JP Morgan Clearing Services.

11 Look at the documents. Here is the irrevocable
12 stock power. What does Marche Godffrey tell you? He told you
13 I filled my name on the top of this, but nothing else. They
14 took it from me. Now what is she doing, she's transferring
15 his shares to Oxbridge Technology Partners. You saw them
16 earlier. They were when Wexler and Discala bought the escrow
17 and said your money is going to go to Oxbridge Technology,
18 down in Belize, Kyleen Cane's company. That's what these
19 shares she's sending. Did Marche Godffrey know? Did he sign
20 off on his shares, which by the way 267,000 shares are worth
21 maybe \$1.3 million, that they are going off to be traded, no,
22 he didn't know. Signature, what does he say, that's not my
23 signature. Someone forged that signature, Kyleen Cane and her
24 team forged that signature. How do you know that? He said
25 that because I have an E at the end and an accent on Marche,

SUMMATION - MR. HEIN

3593

1 There is no E at the end. This is nothing like the signature
2 he signed in the subscription or the non-prosecution agreement
3 that he signed. Kylene Cane and her team are forging the
4 signature to transfer these shares so she can profit from the
5 sale of them, just as she did with David Ben-Bassat's shares.

6 Here are the records Oxbridge Technology Partners,
7 from Belize City, Belize. This is to Empire Stock Transfer
8 saying Marche Godffrey holds these shares, putting them in to
9 JP Morgan Chase enable willing them to be traded as free
10 trading shares. Cane Clark Cubed walking in, picking up the
11 Marche Godffrey stock certificate from Empire and putting them
12 in Cede & Co. to make them tradeable.

13 What you also saw from those JP Morgan records from
14 the witness you saw here, Government 165-26 through 27 is that
15 Cane did in fact, sell 500 of those Marche Godffrey shares on
16 July 15, 2014, just before she was arrested. She's profiting
17 from those shares. While she's profiting from her trading she
18 is still trying to keep the escrow account under wraps. Here
19 is the call with Discala, 198-60, on June 24.

20 (Audio played.)

21 Kylene Cane says to him, he called me, he's asking
22 scary questions about the escrow. She doesn't want anybody
23 calling her about the escrow and asking her how it works.
24 It's her illegal scheme. It's the special scheme that makes
25 this work. And she said, tell Kenny Yellin not to call me.

SUMMATION - MR. HEIN

3594

1 Nobody should be calling me how their shares are split. Just
2 as he said about Goodrich, she doesn't want to talk about the
3 escrow. That continues here.

4 What else is news, Kyleen Cane continues to sell
5 into the buying, into the rigging trading of Cubed through
6 June.

7 What else does she do at the end of June? June 27
8 she transferred Cubed shares to GCEF Opportunity Fund. What
9 is the GCEF Opportunity Fund, a fund in connection with a
10 principal of Glendale. This is Glendale where George Castillo
11 works. This is now as she's talking about she's giving him
12 those \$25,000 for 25 cents on the share.

13 Marcus Poe, remember Marcus Poe another fake
14 shareholder on the 30 fake shareholders list, another person
15 she controls. Here she goes the Empire Stock Transfer and
16 25,000 shares she transfers to GGCEF Opportunity Fund. Marcus
17 Poe, and there I submit to you is the forged signature. So
18 she continued to commit fraud with these fake shareholders'
19 stock.

20 Here Ken Clark picks them up and here is the
21 November check for the GGCEF Opportunity Fund \$6,250 for
22 25,000 shares. It says it there in the memo, 25,000 Cubed
23 shares. This is signed by an individual named Paul Eric
24 Flushing, principal of Glendale Securities, George Castillo
25 her co-conspirator. These free trading shares that she's

SUMMATION - MR. HEIN

3595

1 providing, worth about \$150,000, the stock price of \$6 per
2 share, Glendale paid 6,000 for them. That's what they are
3 getting as being part of this corrupt scheme from these fake
4 shareholders.

5 What else did she do July 1st? She transferred
6 another 225,000 in Cubed trading profits to her account. Just
7 as before, Ben-Bassat's signature is forged, \$225,000. We
8 asked Ben-Bassat, is that the account that you shared with the
9 defendant Kyleen Cane? I believe so. Sir, did you give
10 permission to wire \$225,000 to the Glendale account to this
11 account that was being used by the defendant Kyleen Cane? No.
12 That's \$525,000 she's moved into her account as profits from
13 her scheme. She continues to cash out.

14 What happened else does she do here? July 15, two
15 days before her arrest, she receives 300,000 free trading
16 shares from Cubed. This is purportedly for her legal work for
17 Cubed and Cubed signed off on this paying her one dollar per
18 share for her work that was going to continue, so for 300,000
19 shares that she was getting from them in Cubed. The stock
20 price of six almost \$7, again, 300,000 shares worked out to
21 about \$1.8 million shares that she can trade on the market
22 that she has now in her name.

23 Where does she send these shares? She immediately
24 that same day she goes to Empire Transfer and said please
25 transfer my 300,000 free trading shares in the name of NPNC

SUMMATION - MR. HEIN

3596

1 Management, her company, to conceal her activity. She signs
2 her name at the bottom. She immediately is moving to get
3 these things to be tradeable so she can sell them for profit
4 two days before her arrest.

5 As I said in the beginning of this, all profits
6 Cubed investors expense.

7 Here is the money she made from the Ben-Bassat
8 account, \$570,000 is what was made in that account. As you
9 saw, she transferred over \$525,000. What else did she profit
10 from this scheme? \$300,000 free trading shares. I just
11 showed you that she immediately moved to try to trade two days
12 before her arrest.

13 What else did she profit? If she keeps this scheme
14 going, as she's trying to do, 1 million restricted shares in
15 NPNC Management that she bought from a fake CEO of Northwest
16 Resources, Taylor Edgerton. Again, stock that she could sell
17 when she keeps this scheme going.

18 At who's expense is Kyleen Cane profiting? Victims.
19 You heard from several of them. Rui Falcon, told you that she
20 invested 600,000 of her own money, total of 1.4 million in
21 Cubed. She told you she had a sit-down meeting with Kyleen
22 Cane to discuss the company, and was told that this company
23 was something worth investing, that it was something that she
24 would profit from and had this great technology. She relied
25 on that. She believed in that. So she invested \$1.4 million

SUMMATION - MR. HEIN

3597

1 because she was getting shares, 1 dollar a share, the company
2 was trading at \$6 a share. She was told this company has got
3 a great product, great prospects, it's moving up, you should
4 invest here. And she did.

5 What else did she tell you? She said it would have
6 been material, it would have been very important for her to
7 know if someone held more than 5 percent of the stock; if one
8 person, Kyleen Cane, held all of the free trading shares.
9 Why? Because that someone has control over it and they can do
10 things in that stock you can't do in a normal market
11 conditions. She said if she had known this she would have run
12 as fast away from the company as possible and reported them to
13 the authorities.

14 Eliezer Zupnick, you heard him testify. He told you
15 that Josephberg introduced him to Discala at a meeting, who
16 talked up these companies. He invested \$10,000 in Cubed
17 through a stock purchase agreement with Discala. He never got
18 those shares, despite what it said in the agreement. AJ
19 Discala never gave him the stock certificate. He lost that
20 money.

21 He also invested five grand in Star Stream, lost
22 that; 2500 in Code Smart. He lost more than \$66,000 as a
23 result of AJ Discala and Kyleen Cane's manipulative
24 conspiracy.

25 Igor Gefter, he lost \$55,000 in Crackpot Cubed. He

SUMMATION - MR. HEIN

3598

1 invested in the Cane Clark escrow account. He invested with
2 Omni View he. Invested 5,000 in the open market. He lost it
3 all as a result of the fraudulent scheme the defendant the
4 perpetrated.

5 Bryan Hagen, he told you also about losing \$40,000
6 in Cubed. AJ Discala signed purchase agreements.

7 (Continued following page.)

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SUMMATION - MR. HEIN

3599

1 MR. HEIN: Igor Gefter invested \$40,000 in Cubed.
2 He thought this was going to be a life-changing investment
3 because of where it was trading and what he was hearing about
4 the company.

5 He lost 38,000 of those \$40,000. He also lost \$7500
6 in StarStream because of his investment.

7 And you heard from Michael Kellner, who lost \$43,000
8 in Cubed. And he told you about Chris Meyers, a promoter for
9 AJ Discala, who was a close friend of his, and Michael Kellner
10 had gotten his grandfather's inheritance and wanted to invest
11 it in something. And they misled him into investing it in
12 Cubed. Forty thousand dollars, he invested. AJ Discala
13 signed the stock purchase agreements and he never got a stock
14 certificate. He never got those shares and he lost all that
15 money.

16 Here's what Bryan Hagen told you: Mr. Hagen, would
17 you have purchased stock, Cubed stock from OmniView if you
18 knew that OmniView would not give you a stock certificate? Of
19 course not.

20 Why not? Our agreement that we signed clearly
21 stated that they would deliver the stock certificates.

22 Mr. Hagen, is the loss 52,400 get get? Absolutely.

23 How? This represents a very significant amount of
24 money to our family. I mean that amount of money could have
25 potentially funded one of our kid's college fund, you know,

SUMMATION - MR. HEIN

3600

1 from a personal standpoint, obviously caused stress in the
2 household, stress on my marriage. Obviously, I don't believe
3 we've made any investments since that weren't retirement
4 savings.

5 Was this a large part of your savings, sir?

6 Absolutely.

7 What did Michael Kellner tell you: 1870 in the
8 transcript: Would it have been important to your decision to
9 know that Cubed's stock price was being artificially inflated?
10 That would be very important to know?

11 Why? Because I put my money in the hands of
12 criminals and scoundrels.

13 What kind of financial impact did losing
14 approximately \$46,000 have on you and your family? It was big.
15 It was my life savings and if I had that money now and maybe
16 returns from other investments, I could probably afford a new
17 car, which I need. I could probably afford to send my kid to
18 daycare, which I can't do right now.

19 Those are only certain victims of these schemes that
20 these two defendants perpetrated.

21 And I told you at the beginning I'd come back to the
22 charges. Here are the charges that are laid out, the ten
23 counts. And I want to walk briefly through the law you'll get
24 and explain what we've proven within a reason doubt defendants
25 are guilty of all of the charges in the indictment.

SUMMATION - MR. HEIN

3601

1 Securities fraud: As I said, they have been charged
2 with a securities fraud conspiracy. Both defendants have been
3 charged. AJ Discala with the conspiracy to defraud investors
4 in CodeSmart, StarStream, Staffing Group and Cubed. In that
5 same conspiracy, Kyleen Cane is charged with defrauding
6 investors in Cubed.

7 Counts Three and Four also charge securities fraud,
8 but not a conspiracy. They are substantive counts, is what we
9 would call them, three with respect to CodeSmart, four for
10 Cubed.

11 Here are the element of securities fraud: First, in
12 connection with the purchase or sale of a security, CodeSmart,
13 Cubed and Staffing Group and StarStream, a security owned
14 shares of those companies. The defendants employed a device,
15 scheme or artifice to defraud -- which I explained to you
16 earlier is a fraudulent scheme -- a scheme to deceive or take
17 advantage of investors through lies and false representations.
18 That's one.

19 Four, made an untrue statement of a material fact or
20 omitted to state a material fact necessary in order to make a
21 statement made in light of circumstances of which they are
22 made, not misleading or engage in an act, practice or course
23 of business that operated or could operate as a fraud or
24 deceit upon the purchaser or seller.

25 Now, all three of those you see here: One, device,

SUMMATION - MR. HEIN

3602

1 scheme or artifice to defraud, the fraudulent scheme, I've
2 gone through the evidence on, that these two individuals,
3 these two defendants perpetrated. To lie and deceive
4 investors by not telling them they were manipulating the
5 stocks.

6 Number two, you've seen, basically
7 misrepresentations, material misrepresentations that people
8 rely on. You've seen the false press releases for CodeSmart
9 the false SEC Filings. They lied about exclusive partnership.
10 These are things that investors look to.

11 And in the third scheme we described to you also are
12 acts, practice or course of business that operated as a fraud
13 upon a purchaser or a seller. The act or practice is the
14 fraudulent scheme. It is the rigging of the prices to move
15 them up for your own profit.

16 The second element of securities fraud, defendants
17 acted willfully, knowingly with an intent to defraud. And I
18 submit to you, we've proved this with overwhelming evidence
19 that these two defendants knew exactly what they were doing,
20 and intended to defraud investors. And they intended to do
21 that by rigging these prices, walking them up, selling their
22 shares into them for shares that they got essentially nothing,
23 and made massive profits while their victims lost that money
24 when the stock price collapsed.

25 And you see intent. You see it in words. You see

SUMMATION - MR. HEIN

3603

1 it in wiretap calls. You see it in text messages, the
2 Bell/Discala text messages. You see the wiretap calls with AJ
3 Discala. You see it in emails.

4 And you see it in actions. You see it in placing
5 trades, in placing sales and placing buys, in moving money
6 into different accounts to profit from this. Those are the
7 actions they took to intend to commit this fraud.

8 And finally, defendants knowingly used or caused to
9 be used any means or instrumentality of transportation or
10 communication in interstate commerce. What that means, wire,
11 telephone calls, emails, text messages -- all of that
12 satisfies that last -- you saw those in droves, a number of
13 calls and texts and emails that were sent for perpetrating
14 this fraud.

15 I submit to you that these securities fraud elements
16 have all been met by the evidence you've seen with respect to
17 both defendants.

18 Now, conspiracy. I mentioned to you that securities
19 fraud is Counts Three and Four. And Count One, what we talked
20 about is securities fraud conspiracy. That is Count One and
21 two are charged that way. Conspiracy is simply an agreement
22 with two or more people to violate the law.

23 And in each instance, AJ Discala and Kylene Cane,
24 they were in a conspiracy together with respect to Cubed.
25 Kylene Cane joined an ongoing conspiracy that Discala was part

SUMMATION - MR. HEIN

3604

1 of. He was part of a conspiracy to manipulate CodeSmart,
2 StarStream, Staffing Group and Cubed -- and he had many
3 conspirators, and you heard from several op the stand. And
4 Kyleen Cane joined that conspiracy with respect to Cubed to
5 carry out that manipulation with her special escrow account.

6 So the elements of the conspiracy existed and the
7 defendants knowingly and intentionally joined that conspiracy.
8 And you've seen evidence throughout showing the knowing
9 joining of a conspiracy.

10 Discala texts Bell: We're a good them. We're going
11 to do well for each other. That's a promise. Discala and
12 Cane, Discala says: There's no crime. We're a team. I think
13 it's wonderful. You should take the credit that's in
14 Government Exhibit 189-23.

15 And Cane in that same call saying: I'll just tell
16 them, you know, it's part of a team. When they're part of
17 this conspiracy, they're part of this team.

18 And another call, 198-347: I'm doing this as part
19 of our group effort. They're conspiring to carry this out.

20 And you heard Discala say to Goodrich in a call,
21 198-6, that: There are really five escrows out there. Once
22 you get face-to-face with Cane, she'll explain it to you and
23 you'll be part of that team.

24 Now, I mentioned to you Count One and Two are
25 conspiracy. Securities fraud conspiracy, Count One; wire

SUMMATION - MR. HEIN

3605

1 fraud mail fraud conspiracy, Count Two.

2 For a securities fraud conspiracy, we're also
3 required to prove the defendants or one of their
4 co-conspirators committed one or more overt acts to further
5 the object of the conspiracy, and I've been pointing those out
6 to you throughout, but I want to go through them briefly with
7 you again now.

8 There are thirteen of them. The ones that are in
9 black, I've already gone through. I will show you some in
10 blue that I have not gone through, and I will show you
11 briefly.

12 You recall this is the email from Ira Shapiro,
13 Ramapo, apologizing for the false press release, essentially
14 to keep thing under wraps to further the conspiracy,
15 Government Exhibit 181-1.

16 Here's Government Exhibit 178-40. This is the stock
17 purchase agreement on August 15th with one of Bell's clients,
18 the one they sold at 14 cents a share as hush money, that
19 Discala signed and Bell and Discala together participated in
20 to further that conspiracy.

21 This is the August 27th date, Form 10, regarding
22 Shapiro's stock purchase, basically putting out a false press
23 release saying that he had bought \$80,000 of stock in the
24 company because it is symbolic of his confidence, when, in
25 fact, he didn't put that money. Discala give him that money

SUMMATION - MR. HEIN

3606

1 to try to further the ultimate scheme.

2 Overt Act D -- and by the way, you'll see these in
3 the charge that the judge will read to you at the end. You
4 will recognize it then.

5 This is Government Exhibit 198-3. It's a May 5th
6 call between Discala and Goodrich regarding Cubed: Rigging
7 the spread together, moving the price up. That's also in
8 furtherance.

9 198-13E, you saw this. This is the May 12th call
10 between Discala and Azrak about the bulls and the calves,
11 taking advantage of the speculativeness. Again, furthering
12 the object of the conspiracy, to swindle investors.

13 This one's in blue. I'll go through that in a
14 second. G, we played for you May 20th, 198-20, a call between
15 Discala and Goodrich regarding the escrow on Cubed, talking
16 about the escrow, wanting to meet with Kyleen Cane and
17 manipulating Cubed.

18 H198-21, may 20th call between Discala and Azrak
19 regarding the break and the gas. Discala tells him both the
20 break and the gas. A call in furtherance of the object of the
21 conspiracy, manipulating Cubed.

22 Here's 198-23, May 21st, between Discala and Cane
23 regarding Cane's IRP, her investor relations, public relations
24 guy, the guy she's going to help get the word out there, put
25 press releases out there, furthering the scheme.

SUMMATION - MR. HEIN

3607

1 J -- we'll go to that in a second. I'm not
2 showing -- K198-34, May 27th call between Discala and Cane
3 regarding a trade of Cubed shares. Again, talking about
4 rigging the price, rigging the volume, walking the price up.
5 These last two, I'll go through in a second.

6 I submit to you that all these overt acts that
7 you've seen them played through were in furtherance of
8 securities fraud conspiracy.

9 Here are the four that I have not played for you.
10 Overt Act F, it's Government Exhibit 198-17, Discala said to
11 Wexler in a call: So our deal is going to pay Cubed 250
12 'cause these guys can't generate revenue, so I'm going to
13 generate it myself.

14 And here, he's talking about generating revenue for
15 Cubed, make it look a little better for the company, so they
16 can continue to push the stock price up.

17 Overt Act J, 198-24, Joseph Brooks to Discala: I
18 don't want to be the only one buying today. I heard it looks
19 very bad for a broker to be the only one buying, that's what
20 I've heard.

21 That is a call in furtherance of the conspiracy, and
22 there's more to the call, obviously. But what he is saying
23 here is hey, you're asking me to be a corrupt broker here, do
24 some buys, and I'm a little concerned it's going to look bad
25 if I'm the only one buying.

SUMMATION - MR. HEIN

3608

1 Overt Act L, Government Exhibit 198-35. Discala to
2 Darren Goodrich on May 29th: No. Just buy a hundred and stay
3 under 43. I'll have the other accounts move up. Again, an
4 instruction to buy, manipulating the price, another overt act.

5 Overt Act M, Government Exhibit 198-49, Wexler
6 states to Discala, June 6th: We don't need to go up every
7 F'ing day. The bottom line is though, we are supporting the
8 stock.

9 There, Wexler's talking to Discala about how he and
10 Discala are the ones on the buy side of the stock. They're
11 supporting it. They are rigging it. They're making it go up.
12 Kyleen Cane is selling the stock.

13 I submit to you that we have shown overwhelming
14 evidence proving these overt acts and these overt acts were in
15 furtherance of the securities fraud conspiracy, to defraud
16 investors in connection with the sale of the stock in these
17 companies.

18 Here are the charges: Securities fraud conspiracy,
19 securities fraud, securities fraud. As I said, those are the
20 elements that we needed to prove, and this evidence is proved.
21 It proved that Discala and Cane participated with this
22 conspiracy, agreed to defraud investors with respect to these
23 companies.

24 And that on Counts Three, Discala is guilty of
25 securities fraud for defrauding investors by manipulating the

SUMMATION - MR. HEIN

3609

1 price of CodeSmart; and that Count Four, Discala and Cane are
2 guilty of defrauding investors with respect to CodeSmart by
3 knowingly carrying out this scheme to defraud and using wires
4 and calls and text messages to carry it out.

5 Now, wire fraud and mail fraud. Count Two is
6 charged as wire and mail fraud conspiracy. So I want to walk
7 just quickly through what constitutes wire fraud and mail
8 fraud.

9 First, the scheme or artifice to defraud, obtain
10 money by false and fraudulent pretenses, representations or
11 promises. As you notice, some of that language is identical
12 to the language in the first element of securities fraud: A
13 scheme or artifice to defraud. Just in this case, wire fraud,
14 it doesn't need to in connection with the purchase or sale of
15 a security.

16 This is the same scheme that we're talking about,
17 the scheme that Discala undertook CodeSmart, Staffing Group,
18 StarStream and Cubed, in the scheme, the conspiracy that
19 Kyleen Cane joined.

20 Second, that they knowingly and willfully
21 participated in this, very similar to the second element of
22 securities fraud, is that they knew what they were doing, they
23 intended to do this -- and third, for wire fraud, the
24 defendants used or caused the use of interstate wires.
25 Interstate wires, as I said to you before, are phone calls,

SUMMATION - MR. HEIN

3610

1 text messages, emails. And for mail fraud, the defendant used
2 or caused to use the interstate mail to further this scheme.

3 Now, as for the mail fraud, you heard from -- Bell
4 testifying that he had received via FedEx paperwork from
5 Discala to buy CodeSmart shares and CodeSmart stock
6 certificates from Goepel. That satisfies the mail fraud part,
7 using the mail to carry out this fraud. And Eliezer Zupnick
8 also received CodeSmart shares in Brooklyn, related to this
9 wire fraud.

10 Now, wire fraud is also the last six counts, Counts
11 Five through Ten, and you heard all of those calls. We went
12 through them. I pointed it out to you. And as I mentioned
13 throughout and the judge will tell you that each individual
14 wire, I mean each call is a separate crime, and it's made in
15 furtherance of a fraudulent scheme, and all of those calls, I
16 submit to you, made in furtherance of the fraudulent scheme.

17 And I wanted to also note the venue. Venue is
18 something that we need to prove. That simply means that it
19 happened here in the Eastern District of New York. Each of
20 those wire fraud calls took place while Discala was here in
21 Brooklyn, which gives the Eastern District of New York venue
22 over those crimes.

23 Also, from a venue perspective for securities fraud,
24 you heard from the DTC witness, Deposit Trust Corporation,
25 that all the trades from those four companies were processed

SUMMATION - MR. HEIN

3611

1 here in the DTC from Brooklyn, as well, from a venue
2 perspective.

3 Now, conspiracy, I'm going to go through it just
4 briefly again for the wire and mail fraud conspiracy. Again,
5 joining a conspiracy, knowingly and intentionally joining that
6 conspiracy to carry it out, and I went through examples of
7 that.

8 So here, we have wire fraud, mail fraud conspiracy.
9 Discala and Cane are guilty of that, as well, because they
10 defrauded investors knowingly and using both the wires and
11 mail fraud and the mails.

12 And as to the wires, you heard them. Count Five is
13 Government Exhibit 198-6. I'm not going to play them all for
14 you again now. That's a call between AJ Discala and Darren
15 Goodrich regarding the Cubed manipulation.

16 Count Six, 198-9, a call between AJ Discala and
17 Sloan regarding the Cubed manipulation.

18 Count Seven, 198-74, Discala and Azrak regarding
19 manipulating both StarStream and Cubed.

20 Count Eight, Discala and John Arlo from BMAC talking
21 about the manipulation of SSCT. That's 198-52.

22 And Count Nine, 198-77 is Josephberg and Discala
23 talking about manipulating SSET.

24 And finally, 198-53 is Discala and Wexler regarding
25 Cubed.

SUMMATION - MR. HEIN

3612

1 And you see that here for Count Five, manipulating
2 customers involves Cubed, Six as well. Seven is both
3 StarStream and Cubed. Eight and Nine, StarStream, those are
4 those calls you heard -- and Ten is Cubed. And I submit to
5 you each, one of those was in furtherance of the fraudulent
6 scheme.

7 I know it's been a long presentation and I
8 appreciate your patience.

9 Ladies and gentlemen, this case is about control and
10 deception. The defendants, Abraxas Discala and Kyleen Cane,
11 artificially controlled the price of these companies. They
12 deceived investors by not telling them that they were
13 manipulating the stock of these companies, and they made huge
14 profits from these schemes.

15 And you heard what happened to these investors
16 because of the defendants' fraud. They lost their hard-earned
17 money, money they could have used for their children's college
18 education, money that they could have used for -- to pay for
19 daycare for their children.

20 The evidence we presented to you today proves beyond
21 a reasonable doubt the defendants are guilty of all of the
22 crimes with which they've been charged.

23 Now, after the defendants' summations, we will have
24 the opportunity to come back in front of you and speak to you
25 further about the evidence. And at that time, we'll ask you

SUMMATION - MR. HEIN

3613

1 to return the only verdict consistent with the evidence and
2 your common sense: Guilty on all counts as to both
3 defendants. Thank you.

4 THE COURT: Thank you, Mr. Hein.

5 That brings us to the conclusion of the government's
6 opening summation.

7 Ladies and gentlemen, we'll take a lunch break. I'm
8 going to ask you to go back to the jury room at around ten
9 after four or so.

10 Again, the case is not over. Continue to keep an
11 open mind. Do not discuss the case amongst yourselves or
12 anyone else. If you're on social media, radio silence. Don't
13 use the brief lunch period for an opportunity to conduct
14 research.

15 Again, we all appreciate your patience, sacrifice,
16 and cooperation. Again, we'll see you again in less than an
17 hour.

18 (Jury exits the courtroom.)

19 THE COURT: Okay. We will see you in an hour or so.

20 Have you decided who's going first?

21 MR. RIOPELLE: Yeah. Mr. Ross is going to go first,
22 Your Honor. I wonder what Your Honor's view is as to how late
23 you will sit tonight.

24 THE COURT: We will sit until Mr. Ross is finished.

25 MR. RIOPELLE: Okay. Thank you, Your Honor.

SUMMATION - MR. HEIN

3614

1 Yeah, because I didn't want to start. I mean, I'll
2 go until 9:00 if you want me to.

3 THE COURT: No, no. I think --

4 MR. RIOPELLE: The jury will be tired. Yeah.

5 THE COURT: You told me two hours.

6 MR. RIOPELLE: Yes.

7 THE COURT: I can't imagine how we're going to hear
8 Chuck and then you within a reasonable time.

9 MR. ROSS: That's fine, Judge.

10 MR. RIOPELLE: Thank you.

11 THE COURT: I think that makes sense, unless we get
12 a big surprise and Mister -- I reserve the right to chat with
13 you again if Mr. Ross finishes really quickly.

14 MR. RIOPELLE: I hear you, Judge. I understand.

15 MR. ROSS: I'm probably been an hour-and-a-half or
16 two.

17 THE COURT: If it works out that way, I really don't
18 plan to -- very good. We'll talk.

19 (Whereupon, a recess was taken at 3:25 p.m.)

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SUMMATION - MR. HEIN

3615

1 (In open court, outside the presence of the jury.)

2 THE CLERK: All rise. Court is back in session.

3 Counsel for both sides are present, including the defendants.

4 THE COURT: I found everybody. So, Mr. Ross you're
5 ready to go?

6 MR. ROSS: Ready to go, Judge.

7 THE COURT: Okay. We'll bring the jury in.

8 (Pause in proceedings.)

9 (Jury enters.)

10 THE COURT: Be seated please.

11 Counsel will stipulate that the jury is present is
12 and properly seated?

13 MS. JONES: Yes, Your Honor.

14 MR. ROSS: Agreed, Judge.

15 THE COURT: We all concur.

16 Ladies and gentlemen, we are now in the homestretch
17 of our afternoon session. We will now hear the closing
18 argument from the round of defense closing arguments.

19 The thing to keep in mind here is that each one will
20 be separate for their individual defendant, and secondly, once
21 the closing argument is made on behalf of a defendant and that
22 counsel sits down, that counsel does not get up to give
23 another opportunity. So pay careful attention to each of the
24 closing arguments because that will be the last time you will
25 hear from each the defendants.

SUMMATION - MR. HEIN

3616

1 So to make the first closing argument, I will call
2 upon counsel for Mr. Discala, Mr. Charles Ross.

3 MR. ROSS: Thank you, Judge.

4 Ladies and gentlemen, I said in my opening statement
5 that there would be no credible proof beyond a reasonable
6 doubt that AJ Discala agreed with anyone to commit a crime. I
7 said the proof would not show that he committed any crime, and
8 the proof would not show that he acted in bad faith at all.
9 To the contrary, I suggest that the evidence has proven that
10 Mr. Discala acted in good faith, that he did not commit any
11 crimes, and that he had absolutely no bad faith whatsoever.

12 I said in my opening that there would be no credible
13 proof beyond a reasonable doubt that AJ Discala had any intent
14 to defraud anyone or any company or anything. I suggest,
15 ladies and gentlemen, that there are many reasons, many, many,
16 reasons to doubt the prosecution's case here. There are many
17 reasons to doubt that AJ Discala agreed with anybody to commit
18 a crime. There are many reasons to doubt that he intended to
19 defraud anyone.

20 I suggest to you, ladies and gentlemen, that this
21 case should not have been brought in the first place. I
22 suggest there's nothing -- there is nothing back in July of
23 2014, that could have changed the minds of the FBI that
24 arrested Mr. Discala, and the prosecutors that believed that
25 they had proof beyond a reasonable doubt that he was guilty of

SUMMATION - MR. HEIN

3617

1 anything. There's nothing that could have changed their
2 minds.

3 The prosecution here has relied on just a torrent
4 of, a complete torrent of assumption, speculation, conjecture
5 in an effort to get AJ. This case should never have been
6 brought, but it's come this far and it's time to end A J
7 Discala's nightmare and the nightmare of his family.

8 Before we go through the evidence -- and we'll go
9 through it -- I'd like to thank you all for taking time out of
10 your lives, for coming in here every day for the past four or
11 five weeks and listening. I speak for Mr. Discala and
12 everyone on the defense team because it's such a sacrifice and
13 you've all made it, and we thank you for it.

14 Now, Judge Vitaliano will soon tell you what
15 reasonable doubt means. He'll instruct you and he'll tell you
16 everything about it. The judge will tell you that a
17 reasonable doubt is a doubt that you can assign a reason to.
18 It's a doubt that would cause each and every one of you to
19 hesitate -- to hesitate to take and act in those important
20 affairs in your own life.

21 So let's do this. I don't want to run through every
22 single count here again. We have heard that from Mr. Hein.
23 What I want to do is review with you some of the key elements,
24 a couple of key elements that I want you to focus on as I am
25 going through these reasons to doubt the prosecution's case.

SUMMATION - MR. HEIN

3618

1 And when we do that, ask yourselves are there
2 reasons to doubt? And I suggest there are many. What are
3 those reasons to doubt? And I'll suggest -- and we'll go
4 through it together -- what are those reasons to doubt? Are
5 the prosecutors here asking you to make leaps of faith? Are
6 they asking you to make assumptions or to rely on guesswork or
7 speculation or is there real proof here? I suggest that there
8 are so many reasons to doubt here, I will go through all of
9 them with you.

10 Now, as you heard this morning, Mr. Discala's
11 charged in Count 1 with conspiracy to commit securities fraud.
12 He's charged in Count 2 with conspiracy to commit mail and
13 wire fraud. Count 3 charges him with securities fraud in
14 connection with CodeSmart. Count 4 charges him with
15 securities fraud in connection with Cubed. And the remaining
16 counts, as we heard, are wire fraud counts. Those counts are
17 5 through 10.

18 Judge Vitaliano -- not the Government -- Judge
19 Vitaliano will instruct you on each and every element that the
20 prosecution has to prove beyond a reasonable doubt for all of
21 those charges. I want to focus on two critical elements of
22 these charges.

23 First, as part of what Judge Vitaliano will instruct
24 you on about the conspiracy charges, the prosecution must
25 prove beyond a reasonable doubt that there was an agreement to

SUMMATION - MR. HEIN

3619

1 participate in criminal conduct in a scheme to defraud.

2 And on the securities and wire fraud charges, they
3 must prove an actual participation in a scheme to defraud, as
4 well in the conspiracy to commit securities fraud, they have
5 got to prove beyond a reasonable doubt to your unanimous
6 satisfaction at least one overt act.

7 Now, the judge will instruct you that the
8 prosecution has to prove each and every element beyond a
9 reasonable doubt. Let's go through why the prosecution has
10 failed to prove beyond a reasonable doubt that Mr. Discala was
11 part of any scheme. I suggest the proof does not show that
12 there were schemes to defraud here. And I suggest the proof
13 does not show that Mr. Discala intended to defraud anyone.

14 First, although the prosecutors aren't required to
15 prove this -- it's not in the indictment. They don't have any
16 burden with respect to proving what witnesses came in here and
17 said about Location Based Technologies, HRAA, International
18 Safety Group, Cachet, Soul and others, but those witnesses did
19 come in, ladies and gentlemen. Remember? Matthew Bell, Marc
20 Wexler. They all said that Mr. Discala manipulated the prices
21 of shares in those companies. They put that evidence on.
22 They don't have to prove it, but they took on that proof.

23 There was absolutely no proof. They have to prove
24 it, but they put those witnesses on. There was no proof
25 whatsoever other than the word of witnesses that I suggest to

SUMMATION - MR. HEIN

3620

1 you are completely unreliable that anything wrong, anything
2 fraudulent took place in any of those companies, and that
3 failure, I suggest, ladies and gentlemen, you can take into
4 account.

5 Now, let's talk first about Staffing Group and
6 StarStream. Now we heard Mr. Hein's very, very long
7 presentation, but he zipped right through those two
8 companies -- played a couple of phone calls, showed you a
9 couple of charts -- but I suggest that there's no way that any
10 of you can possibly figure out what any fraud scheme was in
11 either of those two companies because there was no fraud
12 scheme. They haven't proved a fraud scheme in StarStream or
13 Staffing Group beyond a reasonable doubt at all.

14 This table (indicating) -- this table right here is
15 asking you to take leaps of faith -- leaps of faith and rely
16 on conjecture and incomplete proof that there was any fraud
17 scheme at all in either of those two companies.

18 Now, let's start with StarStream. You remember what
19 Mr. Bini said in his opening statement? He said that
20 Mr. Discala and others made worthless companies look good.

21 We know -- we all know that StarStream and every
22 other company charged in the indictment were not worthless.
23 They had real businesses and real services, and real products.
24 But we didn't hear anything -- anything about that during Mr.
25 Hein's almost five-hour presentation.

SUMMATION - MR. HEIN

3621

1 So I suggest ladies and gentlemen, that the
2 prosecution in their opening statement and today are just
3 flat-out wrong about these companies and particularly flat-out
4 wrong about StarStream.

5 In fact, we know from many witnesses that StarStream
6 was a real company. It was a movie company. They made
7 movies. They made well-respected good movies. *The Butler*, by
8 Oprah Winfrey. Jennifer Aniston was in another film that
9 StarStream produced and released.

10 Marc Wexler, Mr. Serial Liar, say anything to save
11 his skin, even told you that he saw a showing of *The Butler*.
12 This is a real company, ladies and gentlemen. It's not some
13 worthless thing. It's not some worthless thing that was fixed
14 up to look good somehow, not at all.

15 Just because Matt Bell mentions StarStream, it's
16 somehow some kind of fraud scheme? Just because there are a
17 couple of calls with Bell and Azrak about StarStream, does
18 that make it a fraud scheme? I suggest no. It does not.

19 Bell, when he got arrested, he lied repeatedly to
20 the FBI and figured out that the only way that he was going to
21 get out from underneath these charges and accusations was to
22 get himself a lawyer, have many meetings with the prosecutor
23 and figure out a way to serve up AJ Discala on a platter. He
24 wants to save his himself anyway he can from a long stretch in
25 the federal prison.

LISA SCHMID
CRR, RMR

SUMMATION - MR. HEIN

3622

1 So just because Matt Bell testifies that he claimed
2 he bought StarStream for his clients' accounts, is that a
3 fraud scheme? Is that proof beyond a reasonable doubt that
4 there was some kind of fraud scheme here in StarStream
5 involving AJ Discala? I suggest no. It doesn't. Not at all.

6 Now, Mr. Discala testified that he invested over a
7 million dollars in StarStream, and he served on the board of
8 StarStream for a few months. He had no free-trading stock in
9 StarStream, at all. Not at all.

10 What kind of stock crook does that? What kind of
11 stock crook goes on the board of a company? What kind of
12 stock crook invests in the company? And what kind of stock
13 crook doesn't have free-trading shares of stock to try to
14 control the price, so that he can come somehow pump it and
15 dump it.

16 And that's another thing Mr. Bini said in his
17 opening. He said that these were pump-and-dump frauds. These
18 were pump-and-dump fraud schemes. Have they proven -- has
19 this table proven at all that there was any kind of pump and
20 dump in StarStream?

21 We heard definitions of pump and dump. We heard
22 that from the Government's own expert, Ms. Oremland; and
23 Ms. Oremland said that a pump and dump is where some people
24 get together and control the offering in a company, in the
25 securities of a company. Then they make false bids to drive

SUMMATION - MR. HEIN

3623

1 the price up; and when it's gotten to a certain level where
2 they all want to sell out, they sell out and leave others
3 holding the bag. That is not what happened in StarStream.
4 They have not proven that in any way, shape, or form beyond a
5 reasonable doubt to any one of you, I suggest.

6 Now, Mr. Discala testified yesterday; and the judge
7 will tell you, when he charges you on the law, that
8 Mr. Discala is something called an interested witness. But
9 that's only common sense, right? He's interested. He's very
10 interested in the outcome here because of everything that's on
11 the line. Just because he's an interest witness, of course,
12 he's interested. It doesn't mean that you just disbelieve
13 him. You use your common sense, and you figure out whether or
14 not he's telling the truth.

15 So, what kind of fraudster, what kind of fraudster
16 would not have control over the stock? He doesn't have any
17 stock. He was on the board. He invested in the company.
18 Where's the control in StarStream? I suggest, ladies and
19 gentlemen, that there is none. That alone, that alone is
20 reason to doubt the prosecutor's case here. It is.

21 And the judge will charge you that, if you
22 disbelieve a part of a witness's testimony, a part of the
23 Government's case, you can throw the whole thing out. I
24 suggest to you that, based on their proof on StarStream,
25 that's precisely what you should do. Even Bell testified that

LISA SCHMID
CRR, RMR

SUMMATION - MR. HEIN

3624

1 AJ Discala lost money in StarStream. What kind of fraud
2 scheme is that when AJ Discala, the supposed ringleader, lost
3 money?

4 Their own expert, Oremland, never even reviewed the
5 SEC filings for StarStream or the servicing group which we'll
6 get to in a minute. You don't have that, you don't have
7 anything to go on about any kind of manipulation in StarStream
8 or in the staffing group.

9 Jamie Sloan lied repeatedly under oath, lied
10 repeatedly under oath in her FINRA testimony. She took an
11 oath. She was asked questions, and she lied time after time
12 after time. Just because she claimed that she worked with
13 Marc Wexler on manipulating the stock price of StarStream, are
14 you going to believe that without more? I suggest that you
15 just can't, and that's a reason to doubt.

16 Both Sloan and Wexler testified about a cash payment
17 to Ms. Sloan to buy SSET, to buy StarStream stock from
18 Mr. Wexler. AJ was not there, but both of them claim that
19 somehow he knew about this. How could Sloan possibly know?
20 How could Jamie Sloan possibly know that AJ Discala knew about
21 this? She didn't know. What, she's some kind of mind reader?
22 She knows nothing about this, about whether or not AJ knew
23 about this. He wasn't there.

24 And how can you believe a guy like Marc Wexler?
25 Marc Wexler is a serial liar. He's a serial liar who will do

SUMMATION - MR. HEIN

3625

1 anything to save his own skin. Do you think there's anything
2 that Marc Wexler wouldn't say to keep himself out of the
3 Federal Pen? I suggest to you that he would say anything to
4 save his own skin. He had a bunch of "I don't know's," "I
5 don't remember," "I don't recalls" from Mr. Bowman when
6 Mr. Bowman cross-examined him; but in a heartbeat,
7 immediately, when he was asked what he got CodeSmart shares
8 for, how much did you pay, immediately it was 0.025 cents a
9 share. He came up with that immediately; but when he's asked
10 by a defense lawyer what he knows, "I don't recall." "I don't
11 remember." You can't believe that man beyond a reasonable
12 doubt for anything.

13 And I suggest, ladies and gentlemen, that there's
14 just absolutely no proof. Ask yourselves: What's the proof
15 that StarStream involved any kind of fraud scheme at all? And
16 I suggest there is none. That's why they zipped over it so
17 quickly.

18 And there's certainly no proof that there was a
19 fraud scheme and no proof at all that AJ Discala was in any
20 way, shape, or form involved in a fraud scheme in StarStream.
21 No proof beyond a reasonable doubt that he had any sort of
22 intent to defraud or that he got involved in any kind of
23 scheme.

24 The same is true for Staffing Group. Again,
25 Mr. Bini opened and said these were worthless companies that

SUMMATION - MR. HEIN

3626

1 Mr. Discala and others fixed up to look good but we all know
2 that StarStream was a real company -- I'm sorry -- that
3 Staffing Group was a real company. We know that. The
4 prosecution's dead wrong about this. They opened on it. It's
5 always been a real company.

6 Even a serial liar like Matt Bell said that he
7 believed that the Staffing Group was for real. But just
8 because Matt Bell claims that his clients made money, in the
9 Staffing Group, does that make it a fraud scheme? Again,
10 there were a couple of phone calls and that couple of charts
11 this morning but Mr. Hein zipped right through any proof that
12 the Government has that the Staffing Group was a fraud.

13 These were all high-risk, high-award investments.
14 There were public filings to that effect. All of the
15 investors had access to that information. All of the SEC
16 filings warned of this.

17 AJ Discala did all kind of due diligence. He
18 checked out the Staffing Group. In what kind of fraud scheme
19 would a guy like Matt Bell, the main co-conspirator in this
20 case, the main alleged co-conspirator in this case, would make
21 only 1600 bucks?

22 Did their expert, Oremland, say anything about these
23 match and wash trades in the Staffing Group? Of course, she
24 didn't. Did she even do one of her charts? We heard about
25 only one press release in TSGL, and that was from Matt Bell.

LISA SCHMID
CRR, RMR

SUMMATION - MR. HEIN

3627

1 The press release said that the company needed money. Come
2 on. A company needs money and that's supposed to get a bunch
3 of people interested, have brokers tell their clients, hey,
4 there's this company, the company really needs money? You
5 want to invest in that? I don't think that happened. I
6 suggest to you that that's proof of nothing. What kind of
7 optimistic outlook is that?

8 Mr. Discala, I suggest, believably told us that he
9 either gave his free trading shares in the Staffing Group away
10 or sold them for a penny, nothing, to investors who he was
11 concerned about, who lost money.

12 Ms. Eckhart, Haley Eckhart, also told us this. Both
13 she and Mr. Discala told us that AJ had a bunch of shares in
14 TSGL left over when he got arrested. What kind of control
15 freak, stock fraudster would do that, hang onto shares? I
16 suggest, ladies and gentlemen, that these were real companies
17 that Mr. Discala invested in, worked for, and yes, cared very
18 much about.

19 Another reason to doubt: The prosecution hasn't
20 proved at all that the Staffing Group was a fraud scheme, was
21 a pump and dump. There's no pump. There's no dump. There's
22 nothing in the StarStream and Staffing Group stock trading.

23 And remember the oh-so-convenient testimony of FBI
24 Agent Luca. Agent Luca testified about the raid on AJ
25 Discala's OmniView offices up in Connecticut; and he testified

SUMMATION - MR. HEIN

3628

1 that agents doing the search and doing the raid just happened
2 to bump, just happened to bump into Mr. Discala's computer.
3 And lo and behold, on that screen, that screen that has the
4 bids, the asks, and everything is TSGL, the Staffing Group.

5 Isn't that just too convenient, ladies and
6 gentlemen? Does that make any sense at all? I suggest it's a
7 likely story. Why would AJ Discala be following TSGL in July
8 of 2014? It doesn't make any sense at all.

9 The indictment actually charged, unlike the
10 companies that I talked to you about, where people just came
11 in and said, yeah, he manipulated LBAS, he manipulated Cachet,
12 these companies are in the indictment. They're in the
13 indictment. The prosecution has to prove beyond a reasonable
14 doubt that there was a fraud scheme, that AJ Discala
15 intentionally acted to defraud others in StarStream, in the
16 Staffing Group; and they have failed. They have failed
17 miserably to prove that to you and I suggest that that is a
18 huge reason, a huge reason to doubt here and you can throw the
19 entire case out just based on that.

20 (Continued on the next page.)

21

22

23

24

25

SUMMATION - MR. HEIN

3629

1 MR. ROSS: So let's talk about Cubed. Mr. Bini is
2 wrong again. Cubed was far from a worthless company that was
3 ginned up somehow to look good. And the opening that the
4 prosecution put on that Mr. Bini gave us, said that there was
5 a pump and dump in Cubed. There was a pump and dump. And
6 this morning Mr. Hein gets up and talks about some kind of
7 rigging of the stock. They don't know which one is which.
8 They open and tell you pump and dump, and then this morning
9 Mr. Hein says, oh, wait a second, it's rigged trading. There
10 is just no proof at all, ladies and gentlemen, that there was
11 a pump and dump in Cubed at all. Their claim is just
12 preposterous and they opened on it.

13 There is no proof that there was any effort to drive
14 the stock price up with aggressive sham bidding. There's no
15 proof that there was a big selloff by insiders in the know and
16 then a drop that left investors holding the bag. That's not
17 the proof at all. These prosecutors are just way out in left
18 field, way out of bounds.

19 And, again, this was clearly a real company with a
20 very, very exciting product. Our witness, David Parker, told
21 you about his efforts to research the Cubed and figure out
22 ways to market it. Mr. Discala hired Mr. Parker. If
23 Mr. Discala just wanted to pull some fraud, why would he hire
24 someone to go and check and see whether or not this was a real
25 company? Why would he care about that? Why would he do that?

SUMMATION - MR. HEIN

3630

1 It's another reason to doubt the prosecution's case.

2 Eric Engstrom, truly a remarkable background, a
3 remarkable background in technology, he checked out the
4 product and he was super-impressed. But put them aside, what
5 about the prosecution's own witness, Rui Falcon, what about
6 her? Isn't she the best witness? One that they put on about
7 how come Cubed was a real company with real potential. Wasn't
8 she just the best witness about this? She invested her own
9 money and money of her clients in the cube. And why did she
10 do that? Do you think that she did it because she thought
11 that it was some worthless company? Do you think that she did
12 it just because she took the word of people that she met with?
13 No, she didn't take the word of anybody. She had a whole
14 team, she had a whole team of people that checked out Cubed.
15 She had an IT lawyer who knew this area who she spoke to and
16 she learned all about this. She's a graduate of the
17 University of Chicago. She owns the serious fund with people
18 who trust her, with people who want her because of her
19 expertise to invest their money.

20 She flew out to Las Vegas and met with the Whites,
21 met with Ms. Cane, and she really checked this out. We heard
22 all about this. The prosecution's own witness didn't rely on
23 the word of other people, she's not in the business of doing
24 that. She checked the Cube out and decided that it had
25 potential. She knew about the mobile-first, the switchover to

SUMMATION - MR. HEIN

3631

1 mobile-first technology and she thought that this was an
2 interesting area for her to invest in and for her clients to
3 invest in and, that is, ladies and gentlemen, from the
4 prosecution's own witness, the best proof that this was a real
5 company with real potential. It wasn't some worthless thing
6 that was made and dressed up to look real, otherwise she never
7 would have committed her money.

8 How can the prosecution claim that this company was
9 worthless or the product was worthless. Even Matt Bell
10 testified that he got an iPhone, loaded the Cube on to it,
11 checked it out, and had investors that were interested who he
12 did the same thing for and they got to look at it, it was
13 real. Victor Azrak said he reviewed videos and presentations
14 on the Cube.

15 There was no testimony about phony press releases.
16 We heard all about press releases in phone calls and in text
17 messages. The claim that somehow you've got to have press in
18 order to get interest in the securities, was there any proof
19 at all, any proof that there was any false press release
20 issued about the Cube? I suggest there wasn't. And that's
21 because the Cube had real potential.

22 Kyleen Cane, a very well respected securities
23 attorney in the microcap area, she's the one that set up these
24 escrows that Mr. Hein talked so much about. The proof showed
25 that Mr. Discala assumed that Ms. Cane did the right and legal

SUMMATION - MR. HEIN

3632

1 thing with these escrows. The escrows were put in place to
2 make sure that the stock of this, really, a gem of a startup
3 company was not going to go to zero before the company had a
4 chance to get the word out and reach an orderly market for the
5 trading of its stock. It was a protection against
6 opportunistic sellers. It wasn't some fraud scheme. It was a
7 protection against opportunistic sellers who might damage the
8 stock price before the word could get out.

9 Just because Matt Bell testified he received
10 restricted shares in Cubed, does that mean that the company
11 and AJ were involved in some kind of fraud? I suggest that it
12 doesn't. There's nothing wrong with getting the word out
13 about a company.

14 Now we all listened to these tape recordings of
15 Mr. Discala. Does he sound like a jerk? Does he sound like a
16 guy that's full of bluster, trying to be a big shot? He does.
17 He sounds horrible. But I suggest that the prosecutors have
18 completely failed to show you how these tapes, which sound
19 awful, which sound like a guy just totally full of himself,
20 are part of a pump and dump scheme in Cubed. This whole thing
21 that they keep going back to about AJ talking about the
22 importance of optics. We all know from the proof in this case
23 that optics don't move a stock price. He's full of bluster.
24 He wants to come off as a big shot. But these are not
25 conversations about stock manipulation. Pure and simple there

SUMMATION - MR. HEIN

3633

1 was no pump and dump like the prosecution opened on in Cubed.

2 I suggest, once again, that we have serial liars
3 like Matt Bell and Marc Wexler and Victor Azrak who are just
4 trying to save their own skins. They were coached, they know
5 they have to save themselves. They know that they have to get
6 AJ Discala and that they have to please these prosecutors and
7 they are the ones that testified that this was a manipulation
8 somehow.

9 The fact -- and Mr. Hein made a big huge deal about
10 this this morning, that the stock price spiked from five to
11 seven is an indicator that there was not control, that there
12 was not control in the Cubed.

13 And what about all these witnesses that testified to
14 the formation of Northwest Resources, the company that merged
15 with Cubed. There was no proof, there was absolutely no proof
16 that AJ Discala knew anything about what went on in Northwest
17 Resources. He had every right to believe that Kyleen Cane
18 knew what she was doing and would do the legal and right
19 thing. The evidence shows that Mr. Discala acted in good
20 faith in believing in Kyleen Cane.

21 Her own witnesses told us that she's one of the best
22 lawyers in this area, one of the most respected lawyers to
23 represent small companies dealing in microcap stocks. The
24 escrows were just a way to protect, to release stock into the
25 marketplace in an orderly way, to give this really good

SUMMATION - MR. HEIN

3634

1 company a chance to succeed and a chance to bring about an
2 orderly market.

3 We know that AJ Discala got restricted shares early
4 on in the Cubed. That meant he couldn't pump and dump this
5 case, he couldn't pump and dump the stock in Cubed. There was
6 no pumping and there was no dumping. The restricted shares
7 that he and everyone had made this an investment in a company
8 that they believed had potential. The SEC filings clearly
9 stated, absolutely clearly stated that this investment in this
10 company was a big risk. Where is the misleading statement in
11 that? Investors knew that this was a high risk, high reward
12 area. They had clear warning. And there is no reliable
13 evidence here that there were any real matched and washed
14 trades going on. The government's now adjusting their theory
15 here to say it somehow rigged, but these aren't matched
16 trades, these aren't washed trades and the judge will tell you
17 what matched and washed trades are.

18 The charts just don't match up. And I suggest that
19 all of this is reason to doubt the prosecution's case in
20 Cubed, there is no pump and dump. The trading just does not
21 show it.

22 The proof shows that Mr. Discala was involved in
23 helping to raise money for the Cubed by doing a bridge loan
24 and a pipe. And we heard all kinds of testimony that there's
25 nothing wrong with a bridge loan. There's nothing wrong with

SUMMATION - MR. HEIN

3635

1 a pipe. And somehow the prosecutors want you to believe that
2 Mr. Discala controlled the bridge and controlled the pipe
3 investors 'cause he knew many of them. But where else do you
4 find investors but from people you know, business associates,
5 family members. Again there's just -- this is proof of
6 nothing. This is proof of nothing.

7 The escrow accounts. Mr. Hein made a big deal about
8 stock certifications not being given to investors. They had a
9 percentage, they had a percentage ownership interest in these
10 escrow set-ups that Ms. Cane put together and Mr. Discala
11 relied on in good faith. He relied that they were the right
12 and lawful thing to do. There's absolutely no proof that the
13 stock price was driven up to make some sort of windfall
14 profit. This is a company that had potential, that was doing
15 well and the escrows were designed to make -- to allow the
16 company to succeed.

17 There is no proof at all that AJ Discala made any
18 money here in the Cubed, no proof, otherwise they would have
19 shown the profits. Mr. Hein went to great lengths to talk
20 about profits. Did you hear word one about AJ Discala
21 profiting at all in Cubed? There's only one company that AJ
22 Discala made any money on and that is CodeSmart. Otherwise
23 the proof shows that he lost money and the proof shows that
24 overall on a cash basis he lost money on everything. He lost
25 over a half a million dollars on everything. He didn't make

SUMMATION - MR. HEIN

3636

1 money here. What kind of stock fraudster, what kind of stock
2 crook completely fails to make any money?

3 Investors lost money in the Cubed. I suggest to
4 you, ladies and gentlemen, that investors lost money here
5 because the FBI and the prosecutors went out and made arrests
6 that shouldn't have been made, not that there was some sort of
7 pump and dump scheme. Cubed was not a fraud scheme at all.
8 In fact, Mr. Engstrom told us that Cubed and Scanbuy were to
9 work together. You'll remember the proof about Scanbuy.
10 You'll recall that this was a product information scanning
11 service that had over 11 and a half million users, 11 and a
12 half million users. The idea was to have the Cube and Scanbuy
13 work together. And they would have provided a revolutionary
14 service to mobile application users. Both companies had
15 major, major pipelines of contracts with major companies. And
16 it's truly ashame that all of this was cut short by a case
17 that never should have been brought in the first place.

18 So let's talk about CodeSmart. Again, CodeSmart was
19 very real, and I'm sure you'll recall that. It was a real
20 company, with a real service. It was a medical coding company
21 that was going to provide training for the changeover from one
22 coding system to another, from ICD-9 to ICD-10. They had a
23 real curriculum and they had arrangements and agreements with
24 schools to provide this training. The CodeSmart transaction
25 was brought to Mr. Discala as a prepackaged deal.

SUMMATION - MR. HEIN

3637

1 You'll remember the testimony, Jeff Auerbach, a
2 securities promoter, brought this deal to Mr. Discala.
3 Everything was prepackaged. Mr. Salvani, Mr. Walsh they were
4 all involved. Again, there is nothing wrong about Mr. Discala
5 knowing of potential investors and offering them the CodeSmart
6 opportunity. All of the people that were involved in the
7 early going were business associates and people who brought
8 value to the company. They were family members, they were
9 friends, they were people that AJ Discala did not have some
10 sort of nefarious control plan over. There is nothing wrong
11 with what was being done.

12 Again, these investors received restricted stock,
13 that's stock that we all know can't be traded. That is a
14 commitment, that's a long-term commitment by people who
15 believed in CodeSmart. Mr. Discala had restricted shares.
16 Restricted shares are not what you want if you want to make a
17 quick buck, we know that.

18 The prosecution has failed to prove any intent on
19 Mr. Discala's part to defraud anyone. He acted in good faith.
20 He tried his best, he tried his best to protect CodeSmart
21 because he believed in that company. He had investors sign
22 real legal contracts. We heard about those contracts. The
23 LU/LO contracts, Lock-up/leak-out agreements. We heard that
24 before the investors could sign off and get their stock they
25 had to sign these LU/LOs. It's an effort to protect the

SUMMATION - MR. HEIN

3638

1 company from opportunistic people just selling off, and these
2 were binding contracts. And we heard about how these legal
3 documents that Mr. Discala put in place were just cynically
4 and routinely disregarded by people who were interested only
5 in making money at the expense of this really promising
6 company.

7 Once the trading began in ITEN stock, as the price
8 began to rise, we heard that Matt Bell needed a winner. We
9 heard that Matt Bell, because he stuffed his own clients'
10 accounts with Location Based Technology stock and HRAA, needed
11 to make some money. We heard that Mr. Discala had lost money
12 in Soul and Vibe.

13 Many of the witnesses, we all know from the proof
14 that we've heard about how selling a stock makes the price go
15 down. We all heard about that. So if Mr. Discala was such a
16 controlling, kingpin of a stock manipulator, a control freak
17 fraudster, why was he selling at the beginning? Isn't the
18 whole theory of a pump and dump that you want to bid the price
19 up, buy the stock to make it go up and once you hit a certain
20 level, you sell it off. If AJ was in control, really in
21 control of the stock price here, how come he's buying when the
22 stock first starts trading. It doesn't make sense. If he's
23 in control he waits until it hits the high, sells off, and
24 then makes a huge amount of money. This is a serious reason
25 to doubt the prosecution's case, it really is. Think about

SUMMATION - MR. HEIN

3639

1 it, ladies and gentlemen, that's the proof. We didn't hear
2 anything, any detailed information about trading patterns,
3 about AJ Discala's trading patterns. What we know is that he
4 sold at the beginning of trading. How is that a pump? How is
5 that a pump at all? You sell your stock that's not going to
6 drive the price up.

7 And we heard evidence that Joe Salvani, who Victor
8 Azrak called Schtup-alvani, and Dan Walsh who Victor Azrak
9 called Scam Walsh were involved in CodeSmart and when that
10 stock price rose, they sold that stock like crazy. They sold
11 that stock like crazy. And there were other short sellers
12 that sold the stock. And you'll remember that one of the
13 reasons why CodeSmart thought that their training services
14 were important was that there was a mandatory changeover from
15 ICD-9 to ICD-10 that was set back a year. It was supposed to
16 happen in the fall of 2013 but it got put back until the next
17 year, the fall of 2014. Ask yourselves, isn't that a reason
18 why the stock price might have gone down? Isn't that a
19 reason? You got Salvani, you got Walsh selling and selling to
20 drive the price down. You have short sellers doing the same
21 thing. You have people that signed lock-up/leak-out
22 agreements, those legal contracts. They signed those legal
23 contracts, they just ignored them. What kind of control did
24 AJ Discala really have? I suggest he had no control at this
25 point. He had no control. And what did he do? He bought.

SUMMATION - MR. HEIN

3640

1 He bought. Why did he do that, why did he do it? Because he
2 believed in the company. He wanted to buy to try to stave off
3 this massive selloff. This is a reason to doubt the
4 prosecution's case here, it really is, ladies and gentlemen.
5 Because what stock fraudster is going to sell at the beginning
6 and buy when the price is coming down? There's just no
7 reasonable explanation for it. None.

8 The proof shows that Mr. Discala was not in control
9 at all. And for there to be a scheme that he was part of,
10 Mr. Hein said this is a case about control, where is AJ
11 Discala's control? It's not there. It's a reason to doubt.
12 It's a serious reason to doubt.

13 And what about the press releases. Mr. Hein made a
14 big deal about these press releases. I suggest that the proof
15 shows that it was Ira Shapiro that was responsible for the
16 press releases. The prosecutors dragged Rose Mulryan in here
17 from Ramapo to show how the press release was somehow phony,
18 that Ramapo press release. It turns out the press release was
19 just sent out early. When Ms. Mulryan complained, Mr. Shapiro
20 was the one that apologized. It was clearly an accident. It
21 was not any sort of intentional misrepresentation that AJ
22 Discala somehow seized on to make money. It was an accident.

23 (Continued on the next page.)

24

25

SUMMATION - MR. HEIN

3641

1 MR. ROSS: There are 50 press releases, 50 of them
2 in evidence. They came in when I was examining Mr. Bell.
3 There isn't a single one of them that are phony or false. And
4 they dragged Ryan Yarosh in here from SUNY Binghamton to say
5 there was somehow some kind of phony press release that said
6 that Code Smart had an exclusive deal. Well, they had a deal.
7 They had an understanding that SUNY Binghamton would provide
8 training. The mistake was exclusivity, that somehow some kind
9 of serious misrepresentation of the market, Mr. Discala has no
10 clue about that. It's Mr. Shapiro that was involved in these
11 press releases. And the two that the Government wants you to
12 believe were phony, was a mistake, ladies and gentlemen. It
13 wasn't like they made it out of whole cloth. They had
14 arrangements with these two schools. AJ was not in a position
15 to have any clue that there was any falsehood. They were
16 mistakes.

17 The prosecutors don't want to talk about the
18 promissory note between Mr. Shapiro and Mr. Discala, that
19 somehow they claim turned into this money that Mr. Discala
20 gave Ira Shapiro so he could come out with a press release
21 saying that he put money into Code Smart and somehow that is a
22 reason for investors to rely on that.

23 This was nothing but a loan, ladies and gentlemen.
24 Mr. Shapiro said he needed money; Mr. Discala loaned him
25 money. It had nothing to do with a bribe or money to invest

SUMMATION - MR. HEIN

3642

1 in Code Smart so there could be some phony press release
2 issue. It was a loan.

3 Oremland, their own expert, told us about the pump
4 and dump. It's about control, she said. And where is
5 Mr. Discala's control? You buy, buy, buy to drive the stock
6 price up, and he was selling. You sell, sell, sell at the top
7 to make money, and he was buying. It doesn't make sense.
8 It's a major reason to doubt.

9 This was not some tightly organized fraud
10 conspiracy, it just wasn't. It wasn't. Mr. Discala had no
11 control.

12 All of the SEC filings made disclosures about risk.
13 And you heard that the company made voluntary disclosures
14 about this 5 percent issue. There was no requirement at all
15 that Omni View had at the time of the filing to do this.
16 Under Rule 13D and Rule 12G there was just no requirement at
17 that point.

18 Oremland tried to tell us that AJ had some sort of
19 ownership interest in the company, but he didn't. It's right
20 there in the Fidelis and Omni View 8K. Anybody could go
21 online look it up and see.

22 And ladies and gentlemen, it was Darren there in
23 Ofsink, the lawyer, who did these filings. I suggest
24 Mr. Discala had every right to believe that Mr. Ofsink the
25 lawyer, would make these filings properly.

SUMMATION - MR. HEIN

3643

1 All these texts between Mr. Discala and Mr. Bell are
2 just examples of Mr. Discala getting the word out, talking to
3 brokers, letting them know that there are opportunities for
4 their clients. Nothing more.

5 The proof shows that in the Autumn of 2013, after
6 the Government somehow claims that AJ Discala was involved in
7 a very controlled pump and dump, that in the Autumn of 2013,
8 AJ goes back in, tries to go back in to Code Smart and turn
9 the company around to refinance the company. You heard that
10 testimony. What kind of stock fraudster does that?

11 Wouldn't he just pump and dump the company and leave
12 it for dead? How come he's going back in there? How come
13 he's proposing board members to Ira Shapiro? Men that knew
14 the company, men that had been involved, and try to refinance
15 Code Smart. What control freak stock fraudster would do that?

16 He got two men on the Board of Directors and was
17 trying to get a third so they could do something about saving
18 this company that had such a good service, such a good
19 service.

20 And Ira Shapiro, Ira Shapiro was the one that
21 blocked all this with his super voting rights. Blocked it
22 all. Fired AJ Discala, fired Omni View, who had come back in,
23 fired them. And what did AJ Discala do? He hired lawyers.
24 He hired Joe Pastore's firm to bring a lawsuit against Code
25 Smart to try to refinance a company that he believed in.

SUMMATION - MR. HEIN

3644

1 The proof is in the case, ladies and gentlemen.
2 What stock fraud enter would ever do that? It doesn't make
3 sense. It's another reason to completely doubt the
4 prosecution's case. Very significant. So let's look at some
5 of other witnesses.

6 Marleen Goepel testified she was AJ's admin
7 assistant. I suggest to you that the Government is the one
8 that convinced her to plead guilty. Why? She tried to claim
9 \$1.2 million worth of losses on her taxes. She snapped that
10 cooperation agreement up real quick to get out from underneath
11 that.

12 She came in here and tried to tell you that she
13 tried to hide Mr. Discala's 5 percent ownership interest in
14 Code Smart. But if you look at the filings, 2 percent of the
15 company were in her name, 2 percent were in AJ's name, we get
16 4 percent. There is not even 5 percent. And Omni View was
17 not required to make that filing. The Government didn't
18 bother to explain that.

19 Darren Ofsink, the lawyer, who Mr. Discala had every
20 reason to believe was doing the legal and right thing, he's
21 the one that decided to disclose it, and he's the one that
22 worked on those disclosures. Omni View disclosed, Fidelis
23 disclosed. AJ's office was listed on everything. What kind
24 of stock fraudster hides in this way?

25 The Government wants you to believe that AJ Discala

SUMMATION - MR. HEIN

3645

1 somehow took advantage of Ms. Goepel, hid his own shares in
2 the pool shares that had her name on it. I suggest it's the
3 prosecution that took advantage of Ms. Goepel will.

4 She left Omni View in less than a year. But not
5 before has Halcyon Cabot said you owe us \$600,000. She
6 claimed it wasn't hers, but it was in her name. It was in her
7 name. And what happened to that? AJ made that payment. He
8 took care of his assistant. She didn't have to pay anything,
9 not one cent out of her pocket. And she stayed on. She
10 continued to work with him.

11 Mark Wexler, he is a serial lawyer, ladies and
12 gentlemen, a serial liar. He wants to help himself to a
13 no-jail sentence here, and this is the only way he can do it.
14 He's in trouble. He knows he tried to bribe Sloan. He said
15 he had no idea what Code Smart did, and that's simply isn't
16 true. AJ knew. AJ believed in Code Smart.

17 Matt Bell, when he's first arrested he's shaking in
18 his boots. He lies repeatedly to the FBI. He says that there
19 was no control over the stock. He told them that there was no
20 grand scheme. He told them that AJ Discala did not control
21 the stock. He told the Government that he always talked to
22 his clients before he got them to invest, talked to them about
23 their accounts. He said he even called up a hospital in
24 Texas, in San Antonio, and found out that Code Smart did have
25 a deal with the hospital for training. And then he finds out

SUMMATION - MR. HEIN

3646

1 that he's in big trouble so he hires a lawyer, and he starts
2 lying again. He starts lying to save his skin. And when his
3 clients were complaining, what happened? They got shares at
4 14 cents that were supplied by AJ Discala. What kind of stock
5 fraudster does that?

6 This was in 2014. No one had any idea that we'd be
7 pouring over text message after text message, phone call after
8 phone call.

9 Bell saw the Cubed product. He talked about that.
10 This was a real company. We heard from him. That it was Joe
11 Salvani and Dan Walsh that blocked, that tried to block, along
12 with Ira Shapiro, AJ Discala's effort to take Code Smart back
13 and try to make sure that this company with a good service was
14 able to make money and able to continue to train people.

15 And how did Mr. Bell, the main conspirator, the
16 person that the Government claims was the main conspirator
17 here, how did he do? He made \$1,600, \$1670 in TSGO. He lost
18 \$7,254 in SSET. And he made about 99 bucks in CRPT. But
19 every single word out of his mouth was manipulation. What
20 kind of fraud scheme would have the main conspirator do this
21 kind of profiting? He made basically no money here. I submit
22 to you that he was coached.

23 We heard from Mr. Mokros, the Empire Stock transfer
24 agent. He kept a running tab on who owned stock in a stock at
25 any given time. What did he tell you, he told you Mrs.

SUMMATION - MR. HEIN

3647

1 Discala and Omni View had restricted shares of Cubed. Why
2 would they do that if they wanted to run a fraud scheme?
3 Restricted shares just can't be used. We know that.

4 And he also told you that there was nothing wrong
5 about a reversed merger, absolutely nothing. There was
6 nothing illegal about a shell company. The Government wants
7 you to believe that there was something wrong with this whole
8 process. And it's done everyday. It's usual, that we what
9 heard from Mr. Mokros. It doesn't matter whether the shell
10 company is a barbecue sauce company, a hulahoop factory, or a
11 kite design business. There is nothing that requires that a
12 tech company find a tech shell, or a medical coding company
13 find a medical coding shell. It's just total nonsense.

14 These preliminary transactions in both Cubed and
15 Code Smart, nothing wrong with them. Ms. Oremland, just
16 cherrypicked the charts that she drew up. She had in charts
17 that we saw this morning select accounts. That's the perfect
18 name for them, because who selected the accounts that were
19 analyzed by Ms. Oremland, who selected them? The prosecutors
20 did. And what accounts did they select to compare volume, to
21 compare price, to compare who was involved? The prosecutors
22 selected them. They are not even trying to get you the full
23 picture of what happened here.

24 Look at the charts, they are really not proving
25 anything. They are select accounts based on select days and

SUMMATION - MR. HEIN

3648

1 that's the best they could do. There are no real wash trades.
2 There are no real match trades here. They tried to pull it
3 together in these charts. It's just not there.

4 And SEC accountant, Mr. Ferrante, he only looked at
5 the four companies in this case, completely ignored the other
6 companies that we've heard about. Even though Soul had been
7 smack dab in the middle of Code Smart trading, we hear nothing
8 about an analysis of that. The Government, the prosecutors,
9 are not trying to give you the full picture here.

10 Victor Azrak, lies to the FBI after he's arrested.
11 He gets a lawyer. He knows he's got to save his own skin. He
12 lies some more to you here in this courtroom. He's a kid.
13 His dad is very wealthy and very, very successful,
14 \$100 million net worth. And he needs to get out from
15 underneath a 25-year jail sentence, maximum 25-year jail
16 sentence that he's facing.

17 Now at the end of the day, ladies and gentlemen, and
18 all of this is in evidence in trading records, in bank
19 statements, when you add up the pipe investments, the bridge
20 loans, the public and private trading, legal fees, cash
21 expenses, on all of the four companies named in the
22 Indictment, on a cash-in cash-out basis, AJ Discala loses
23 money. He losses half a million dollars in money. And when
24 he's arrested, and you can see this in the bank records, to
25 his name he's not some multi-millionaire, to his name he's got

SUMMATION - MR. HEIN

3649

1 \$183,000.

2 I'm almost done. Like the Judge said, the
3 prosecution gets to go last. If they make an argument that
4 you all think I would have made, please think about how I
5 might respond to that argument. Because I don't get to talk
6 to you again.

7 Remember, when I asked you in my opening statement
8 to treat your service here on jury duty like you would in
9 matters of your own lives which are important, to take it real
10 seriously, and I know you all have. To treat AJ Discala's
11 case with the same seriousness as you would in making a
12 decision in your own lives which is important. I asked you to
13 do that and I know you all are doing that.

14 But Judge Vitaliano will tell you, that a reasonable
15 doubt, is one that would cause you to hesitate in making a
16 decision in your own lives. That's important. And that's
17 what reasonable doubt is.

18 It's like the decision to get married. It's a
19 decision that you make once in your life or twice.

20 I suggest to you that all, these reasons to doubt
21 that I've been talking with you about today, would cause you
22 to hesitate, to hesitate in matters in your own lives that are
23 important to you. I suggest that you would not rely on the
24 assumptions, the speculations the, leaping of faith that
25 prosecutors want you to make here in trying to decide whether

SUMMATION - MR. HEIN

3650

1 or not to make a life-long commitment. You just wouldn't.
2 You wouldn't rely on these witnesses. You wouldn't rely on
3 this proof. The reasonable doubts, the doubts that I
4 suggested to you today are reasons to hesitate, are reasons to
5 hesitate in making a decision that's important in your own
6 lives.

7 Some weeks from now somebody might ask you what was
8 it like to be on jury duty. And your service is going to be
9 over. It's going to be over and you could talk to them and
10 you can tell them. Justice is done in this country, like the
11 Judge has told you, by people, by people like each and every
12 one of you. You all should just be intensely proud. You
13 should be intensely proud that you were selected to serve on
14 this jury. And when your friends ask you what was it like,
15 what was it like to be on jury duty? You could look them in
16 the eye, you can look them in the eye and say I was part of
17 justice. I was part of justice. That's what it was like.

18 Sometimes justice is convicting the guilty.
19 However, if you have a reasonable doubt and, I have suggested
20 to you so many reasons to doubt, then justice is acquitting AJ
21 Discala. If you have a reasonable doubt here, justice is
22 acquitting AJ Discala, and ending his nightmare. And the
23 proof shows so many reasons to doubt. I've tried really hard
24 to show you these reasons to doubt.

25 We all on AJ's defense have fought really hard, have

PROCEEDINGS

3651

1 fought really hard for him. And I've tried very hard to show
2 you these reasons. And it's been an awesome responsibility
3 for me, for everyone, for all the lawyers on the defense team,
4 it's been an awesome responsibility. But you know what I'm
5 going to do now, I'm going to turn that responsibility over to
6 you all. And I have only one request, when I hand it to you,
7 I ask you to do one thing, please treat it gently and with
8 respect, gently and with respect.

9 And if you do that, and I know you will, because
10 you've been here every single day, I know you will, and I
11 suggest that there is only one verdict in this case, and that
12 verdict is that AJ Discala is not guilty of every single
13 charge in this Indictment. Thank you so much.

14 THE COURT: Thank you, Mr. Ross.

15 Ladies and gentlemen, that brings us to the
16 conclusion of today's work. As you know, from what I've told
17 you, you have summation tomorrow on behalf of Ms. Cane.
18 You'll have rebuttal from the Government. And you'll have
19 final instructions that I have prepared for you that we'll
20 give you, the law that you have to apply to the facts as you
21 find them.

22 Our schedule will probably be an extended day again
23 tomorrow, that probably won't be much of a surprise to you.
24 Again, we're trying to make this case as efficient and as fair
25 as we can, and try to minimize the amount of time that you

PROCEEDINGS

3652

1 spend away from things that are important to you.

2 You can also plan on tomorrow that, remember very
3 early in the case I said when I sent you out to lunch no one
4 was going to buy you lunch, well tomorrow we're going to buy
5 you lunch. We're also going to make you stay in the jury
6 room. But we're going to provide lunch as we head into the
7 deliberation phase of the case. But we're not there yet.

8 So what does that mean, that means that you still
9 have an open mind. You're to keep an open mind. You're
10 directed to keep an open mind. You're directed not to discuss
11 the case amongst yourselves or with anyone else. To the
12 extent there are any media accounts about the case, you're
13 directed to shut that all out of your mind, ears and eyes.
14 You're also urged, as I do every night, to turn away from
15 media accounts of any court proceeding for fear that you will
16 be confused by something you hear there as opposed to what
17 your responsibilities are here. You're not to use the recess
18 period as an opportunity to do any research of any kind,
19 electronic or otherwise. And if you're on social media
20 platforms or any other way like us old folks, using the
21 telephone, you're on radio silence. You're not to lead on
22 that you're even a juror or anything of course that is
23 directly about your jury service in this case or any of the
24 personalities in it.

25 We do all appreciate your attentiveness. We

PROCEEDINGS

3653

1 appreciate your patience, your corporation, and your
2 sacrifice. We look forward to seeing you tomorrow in the
3 central jury room 9:45. We'll get started as close to ten as
4 we can.

5 Have a pleasant evening.

6 (Jury exits the courtroom.)

7 THE COURT: Any housekeeping?

8 MR. BOWMAN: I received a call two hours ago, my
9 wife had been in an automobile accident. I think she's okay.

10 THE COURT: She's okay?

11 MR. BOWMAN: I don't know. She's in the hospital
12 now. I may be late tomorrow.

13 THE COURT: Can we start without you?

14 MR. BOWMAN: I'm sure you will.

15 THE COURT: Mr. Discala's well-staffed. We all wish
16 good things for your wife, hopefully you'll bring us good news
17 tomorrow.

18 MR. RIOPELLE: I just wanted to confirm that court
19 is taking Monday and Tuesday off next week?

20 THE COURT: Yes. To the extent that the jury is
21 continuing its deliberation, I have to be in Washington on
22 Monday and Tuesday. If the jury is still deliberating, we
23 will resume on Wednesday.

24 MR. RIOPELLE: Very good. I had someone scheduling
25 something on Tuesday.

PROCEEDINGS

3654

1 THE COURT: Right now we have one item that we were
2 scouring the charge. One of those unanimouslies we put in
3 yesterday. Ben will read it. It's the one that began in sum.
4 This is what we did, we took the unanimously out and it was
5 like a couple of sentences and added something, a new
6 sentence, at the end.

7 THE LAW CLERK: In sum, a defendant who is an
8 understanding of the unlawful character of the conspiracy must
9 have intentionally engaged, advised or assisted in it for the
10 purpose of furthering the illegal undertaking. He or she
11 thereby became a knowing and willing participant in the
12 unlawful agreement; that is to say, a conspirator. Again, an
13 act is done willfully if done voluntarily and intentionally
14 and with the specific intent to do something the law forbids;
15 that is to say, with a bad purpose either to disobey or
16 disregard the law. These are findings you must make
17 separately and unanimously with respect to each defendant.

18 MR. RIOPELLE: That sounds fine.

19 MS. JONES: That's fine, your Honor.

20 THE COURT: Just in case you were looking for it.
21 All right, good evening. We look forward to seeing you
22 tomorrow.

23 (Proceedings adjourned at 5:55 p.m. to resume on
24 May 03, 2018 at 10:00 a.m.)

25

3655

1 I N D E X

2 WITNESS	PAGE
3 ABRAXAS DISCALA	
4 REDIRECT EXAMINATION BY MR. BOWMAN	3473
5 RECROSS-EXAMINATION BY MR. BINI	3475
6 SUMMATION BY MR. HEIN	3481
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
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25	